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TRIAL

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

S1 16 Cr. 0338 (PKC)

5 WILLIAM T. WALTERS,

6 Defendant.

7 -----x

March 15, 2017

8 2:00 p.m.

9 Before:

10 HON. P. KEVIN CASTEL,

11 District Judge

12 APPEARANCES

13 JOON H. KIM

Acting United States Attorney for the
14 Southern District of New York

15 BY: DANIEL S. GOLDMAN

BROOKE E. CUCINELLA

MICHAEL FERRARA

16 Assistant United States Attorneys

17 KRAMER LEVIN NAFTALIS & FRANKEL, LLP

Attorneys for Defendant

18 BY: BARRY H. BERKE

PAUL H. SCHOEMAN

19 ANDREW J. ESTES

MICHELLE BEN-DAVID

20 -and-

21 WRIGHT STANISH & WINCKLER

BY: RICHARD WRIGHT

22 - also present -

23 SA Edmund Rom

SA Nicholas Anderson, Federal Bureau of Investigation

24 Raymond McLeod, Defense Tech Support

Holly Meister

25 Sarah Pyun, Government Paralegal Specialists

H3F3WAL1

(In open court; jury not present)

THE COURT: I'm told by my deputy that there are four jurors who want to see me at the sidebar. Why don't you bring in Jurors 16 and 17.

(At the sidebar)

THE COURT: Ma'am?

(Juror present)

THE COURT: You're juror number?

JUROR: 17.

THE COURT: Yes, ma'am.

JUROR: What am I supposed to say?

THE COURT: Nothing. How are you?

JUROR: I'm fine. You're looking at me.

THE COURT: No. That's fine. Okay. Thank you.

JUROR: Okay.

THE COURT: You can go back to your seat then.

(Juror not present)

THE COURT: Flo, just stay there, ma'am, for a second.

Put on the record what happened. And put the white noise machine on.

THE DEPUTY CLERK: Yesterday --

THE COURT: Get over here.

THE DEPUTY CLERK: Yesterday she said she couldn't --

THE COURT: You mean on Monday?

THE DEPUTY CLERK: On Monday. That juror, which was

H3F3WAL1

17, said she couldn't do it because of the business trip that she needed to go on, and I said you can bring some proof that it can't be adjourned and speak to the judge.

THE COURT: I'm not inclined to do anything. Am I supposed to say is there some reargument you want to make? I think it was a fair opportunity to say whatever she wanted to say.

MR. BERKE: We agree, Judge.

MR. GOLDMAN: That's fine with us, your Honor.

THE COURT: All right.

Juror No. 16, if you want to come over, please.

(Juror present)

THE COURT: Hi.

JUROR: Hi.

THE COURT: What's going on?

JUROR: I mentioned to you two days ago that I had a trip booked, and I wasn't going to be here that Monday. And I asked my sister if she could forward me the information. So I brought the ticket. It says non-refundable, non-transferable, so, I'm going on the trip.

THE COURT: All right. So you could come in on Tuesday though.

JUROR: Yeah.

THE COURT: Okay.

JUROR: So I'm leaving Friday, and coming back Monday

H3F3WAL1

1 night. So I could be here Tuesday, yeah.

2 THE COURT: What is the Monday that you would be
3 missing?

4 JUROR: April 10th. Let me double check that.
5 April 10.

6 THE COURT: I think that's going to be fine.
7 Because -- I don't know. That's Passover. Let me talk to the
8 lawyers and see what they have to say. If you can go back.

9 (Juror not present)

10 MR. GOLDMAN: It's the same deliberation issue, your
11 Honor. It is that Monday of the fifth week that we discussed
12 earlier. We have enough alternates, I don't know --

13 THE COURT: We might. I could always excuse somebody
14 at the last minute, depending on where we are in the trial.

15 MR. BERKE: I would say, Judge, we should keep her.
16 If by chance we are not done and we are sitting Passover, we
17 have alternates.

18 THE COURT: Okay. Thank you.

19 (In open court)

20 THE COURT: You may return to the jury room.

21 So you can bring the jury in now.

22 MR. BERKE: Your Honor, during the opening we're going
23 to use a slide. We gave it to the government yesterday.

24 THE COURT: As long as you've shown it to the other
25 side.

H3F3WAL1

MR. BERKE: Thank you, Judge.

THE COURT: Are our jurors ready?

THE DEPUTY CLERK: Yes.

THE COURT: Bring them in, please.

(Jury present)

THE COURT: Please be seated.

Ladies and gentlemen, I see we all survived the non-blizzard of 2017. It did, however, give me something in my voice, and I apologize if it is a little gravelly today, but that's just the way it is.

I'm going to give you some preliminary instructions. And as I mentioned, there will be full instructions at the close of the case. In fact, I'll deliver them to you orally, and I'll also give you the typed text of the instructions at the time of closing arguments.

This is a criminal case. The defendant has been charged with, as I indicated, four counts of securities fraud, four counts of wire fraud, one count of conspiracy to commit securities fraud, and one count of conspiracy to commit wire fraud.

This is set forth in an indictment returned by a grand jury sitting in this district. An indictment itself is not evidence. It simply contains the charges that the government is required to prove beyond a reasonable doubt.

The defendant, William Walters, has entered a plea of

H3F3WAL1

1 not guilty to the indictment, and the law presumes him to be
2 innocent of all charges against him, and the burden is on the
3 prosecution to establish the defendant's guilt beyond a
4 reasonable doubt with respect to each element of the offenses
5 charged. The burden of proof never shifts to the defendant in
6 a criminal case, and the law never imposes on a defendant the
7 obligation of doing anything in a criminal trial.

8 The presumption of innocence remains with the
9 defendant throughout the trial, unless and until, after hearing
10 and considering all of the evidence and my final instructions
11 on the law, you as jurors unanimously are convinced of
12 defendant's guilt beyond a reasonable doubt.

13 Until it is time to deliberate at the conclusion of
14 the case, it is important that you keep an open mind.

15 You must pay close attention to all the evidence
16 presented. Evidence consists only of the testimony of
17 witnesses, documents, and other things admitted as evidence, or
18 stipulations or agreements by the attorneys.

19 Certain things are not evidence, and may not be
20 considered by you. Statements, arguments and questions by
21 lawyers are not evidence, nor are my own statements to you.
22 So, say a witness is asked "Were you at the Barclay Center on
23 August 1, 2016 to watch a particular game?" And the witness
24 says "no." You're not to speculate, I wonder why the lawyer
25 asked about the Barclay Center on August 1, 2015. The question

H3F3WAL1

1 is not evidence. It's the witness's answer together with the
2 question that is the evidence.

3 Now, the lawyers here are going to make opening
4 statements to you. They're going to stand at the podium and
5 give you a preview of what they hope to prove in the trial.
6 Those opening statements are not evidence. It's the actual
7 testimony of the witnesses, the documents, the stipulations.
8 Not lawyers' argument at the podium. But, lawyers' argument
9 can be helpful in giving you a preview of a case.

10 Objections to questions are not evidence. Lawyers
11 have an obligation to their client to make an objection when
12 they believe evidence is being offered for improper purpose
13 under the rules of evidence. You should not be influenced by
14 the objection or by the Court's ruling on it. If the objection
15 is sustained, ignore the question and any answer that may have
16 been given. If it is overruled, treat the answer like any
17 other answer.

18 If you are instructed that some item of evidence is
19 received for a limited purpose only, you must follow that
20 instruction. Testimony that the Court has stricken or excluded
21 or that I've told you to disregard is not evidence and may not
22 enter into your deliberations.

23 Finally, anything you may have seen or heard outside
24 the courtroom is not evidence and must be disregarded. You are
25 to decide the case solely on the evidence presented in the

H3F3WAL1

1 courtroom.

2 Now, in deciding the facts of the case you will have
3 to decide on the credibility of the witnesses. How truthful
4 and believable they are. How do you decide what to believe and
5 what not to believe? Well, you are going to listen to the
6 witness, watch him or her, observe him or her, and then decide
7 as you would decide such questions in your ordinary life. Did
8 they know what they were talking about? Were they candid,
9 truthful, honest? Did they have a reason to falsify,
10 exaggerate or distort their testimony?

11 Sometimes it's not what a witness says but the way
12 that he or she says it that may give you a clue as to whether
13 or not to accept the witness's version of an event or incident
14 as credible or believable. In short, the way a witness
15 testifies may play an important part in your reaching a
16 judgment as to whether you can accept the witness's testimony
17 as reliable. You will use your common sense and good judgment
18 to evaluate their testimony, based on all the circumstances.

19 I cannot emphasize too strongly, and you're going to
20 hear it from me every day, that you must keep an open mind
21 until the trial is over. A case can be presented only step by
22 step, witness by witness, and it would be terribly unfair to
23 one side or the other if you made up your mind before you heard
24 all the evidence.

25 We know from experience that frequently we'll hear a

H3F3WAL1

1 person give a version of events which sounds pretty impressive.
2 And yet, when we hear another person's version of the same
3 event, or maybe that person being asked questions about the
4 event, what seemed so impressive and compelling is totally
5 weakened and may not be believable. You will use your common
6 sense and good judgment to evaluate their testimony based on
7 all of the circumstances.

8 You should not reach any conclusion until you have all
9 the evidence in. In order to ensure that you decide the case
10 only on the evidence, and that you're not influenced in any way
11 by anything that may occur outside the courtroom in your
12 presence, I'm going to give you a specific set of instructions.

13 First, do not discuss the case among yourselves or
14 with any other person. When you go in the jury room on a
15 break, you can talk about snow shoveling, you can talk about
16 your weekend plans, but you don't talk about a witness's
17 testimony or that was interesting, or that person did or did
18 not know what they were talking about. That is improper, and I
19 direct you not to do so. You will have the opportunity and,
20 indeed, the duty to discuss the case among yourselves after all
21 the evidence is in, and the case is given to you to decide.

22 We've talked about this during jury selection. You
23 may not discuss this case with family or friends. Remember
24 what I said about a little mystery in your life. Just tell
25 them you're on a jury, you'll tell them all about it when it's

H3F3WAL1

1 over, and you are under court order not to discuss the case.
2 Think about it. You're here in the courtroom. You will know
3 more about the case than any other human being outside of the
4 courtroom. And so, their opinions are worthless and dangerous
5 and undermine the integrity of the process.

6 Next, you are not to read anything in the newspapers
7 or elsewhere about the case. You're not to listen to any
8 reporting about the case, if it should be broadcast on TV or
9 cable channel or on the internet or radio, and as I told you,
10 you do not do any internet searches. Think of how unfair that
11 is to one side or the other. They may have a simple answer
12 when something comes up in the courtroom, they can respond to
13 it. But if jurors are doing their own internet searches, it's
14 unfair because they don't know what you're searching and
15 whether it is reliable. They don't even know how to respond to
16 it. They don't even know there should be a response to it. If
17 you believe in our American system of justice, you will follow
18 that instruction scrupulously.

19 Now, don't send or receive any communications about
20 the case. No texting, e-mailing, blogging, posting information
21 on social media, or using electronic communications to discuss
22 the case. You don't discuss it with your fellow jurors by text
23 or otherwise.

24 If it becomes necessary to send the Court a note about
25 something you saw or heard or about any matter, do not share

H3F3WAL1

1 the content of the note with your fellow jurors. Imagine
2 sitting in the jury room, and you arrive in the morning, and
3 one of the jurors needs to send me a note. Maybe it's about
4 something they heard about the trial. I don't know. If that's
5 the case, they should write that note and send it to me.
6 They're not being rude when they don't share it with the other
7 jurors. You know, you're saying what's the matter with this
8 person, they're sending the judge a note and they're not even
9 going to tell their fellow jurors what they're writing about?
10 No. That's following my instruction. Because sometimes,
11 something somebody heard or saw could require their removal as
12 a juror. And in that case, if they've shared it with the rest
13 of the room, well, you can imagine what the consequences could
14 be.

15 Now, you're not to allow anyone to speak to you about
16 the case. If you're approached by anyone to speak about the
17 case, politely tell them that the judge has directed you not to
18 do so. If any person seeks to contact you, you are required to
19 report the incident to me promptly.

20 The attorneys, the defendant, and the witnesses are
21 not permitted to talk to the jury outside the courtroom. They
22 can't even offer you a friendly greeting. So you can wind up
23 in an elevator with them, and you know, in our society, it's
24 kind of -- you would think almost rude for somebody who you're
25 sitting in the same room with not even to acknowledge you

H3F3WAL1

1 exist. But, when they do not acknowledge you, they are
2 following my direction to them not to talk to jurors about
3 anything.

4 If anyone you know comes into the courtroom, please
5 let me know. It's a public courtroom. That could happen.
6 But, I need to know about it because there may be matters
7 discussed out of the presence of the jury that the jury is not
8 supposed to know about, so I just need to know about that.

9 A few words about trial procedure. The lawyers have
10 the opportunity, but are not required, to make opening
11 statements. Preview of the evidence. But the preview is not
12 evidence. It is a preview of the evidence.

13 After all the evidence has been received, the lawyers
14 then have an opportunity to sum up. They may review the
15 evidence and make arguments to you as to what conclusions they
16 think you should or should not draw from the evidence. These
17 arguments are not evidence themselves. And then I'll give you
18 detailed instructions on the law, and then and only then can
19 you go into the jury room to deliberate.

20 A witness will take the stand, typically, and they
21 will be examined by the party calling them. Now, the defendant
22 has no obligation in a criminal case. So let's say the
23 government calls a witness, the defendant may choose to
24 cross-examine the witness, and then following that
25 cross-examination, the government gets to ask questions on

H3F3WAL1

Opening - Mr. Ferrara

1 redirect. So that's what happens in a trial.

2 And at this point, ladies and gentlemen, we're going
3 to begin. And we're going to begin with the opening statement
4 of the government, that's going to be delivered by Mr. Ferrara,
5 is that correct?

6 MR. FERRARA: Yes, your Honor.

7 THE COURT: Whenever you're ready, Mr. Ferrara, you
8 may begin.

9 MR. FERRARA: Thank you, your Honor.

10 Good afternoon, ladies and gentlemen.

11 Greed. That's what this case is about. It's about
12 this man, William Walters, illegally and unfairly using secret
13 business information to make millions in profits and avoid
14 millions in losses. In total, he benefited from his crimes by
15 over \$40 million. It's about Walters conspiring with a
16 well-connected businessman to get confidential, non-public
17 information about companies, what is called inside information,
18 so that he could trade stocks based on it. This case is about
19 how Walters took unfair advantage of that inside information to
20 make more money for himself in the stock market. An unfair
21 advantage that ordinary investors, investors who follow the
22 law, never get to have.

23 As you'll learn, over a period of six years, from 2008
24 to 2013, Walters requested and received some of the most
25 sensitive and confidential information about a company called

H3F3WAL1

Opening - Mr. Ferrara

1 Dean Foods. Dean Foods is a Fortune 500 company. It is the
2 nation's largest distributor of milk. Walters received that
3 sensitive and non-public information about Dean Foods from an
4 insider of that company who was a close personal friend of his.
5 Walters then repeatedly used that inside information again and
6 again to illegally trade in the stock of Dean Foods.

7 What did Walters get out of it? Enormous profits in
8 the stock market. What did the Dean Foods insider get in
9 return for giving Walters the inside information? Well, a
10 deepening friendship with Walters, and nearly \$1 million in
11 personal loans that he asked Walters to give him. One million
12 reasons for the insider to keep providing the inside
13 information.

14 So let me back up for a minute. William Walters, who
15 goes by Billy with his friends, is a highly successful sports
16 bettor. He owns golf courses, businesses, Walters was also a
17 knowledgeable investor who bought and sold stocks. You're
18 going to learn during the course of this trial that secret or
19 confidential information about a company that the public
20 doesn't know can be a very valuable thing in the stock market,
21 which makes sense, right? If you know confidential information
22 about a company before everyone else, well, you can make a lot
23 of money trading stocks with people who haven't been given
24 access to the same secrets as you.

25 Insider trading is a crime because the marketplace is

H3F3WAL1

Opening - Mr. Ferrara

1 supposed to be a fundamentally fair place for people to invest.
2 Big or small, rich or poor, Wall Street or Main Street. And
3 insider trading is a way for people to cheat that entire
4 system. A way for people who have inside information to give
5 each other that edge, that illegal edge that the rest of the
6 public never gets to have. That the rest of investors never
7 get to enjoy.

8 And that's exactly what Walters did. He schemed with
9 a corrupt businessman named Tom Davis to get access to secret,
10 confidential, corporate information about Dean Foods, and then
11 Walters traded on that information.

12 The evidence is going to show that Walters often knew
13 tomorrow's news today. And he knew it because he had an
14 insider, Tom Davis, who was illegally supplying it to him. And
15 you're going to hear testimony from Tom Davis, Walters' partner
16 in crime. After initially lying to authorities, Davis
17 ultimately came clean. Davis has pled guilty to insider
18 trading. And he's going to come and testify before you. He'll
19 give you a first-hand account of the crimes he committed with
20 Walters.

21 He'll tell you right from that witness stand how he
22 fed Walters critical, inside information. That he did so
23 knowing that he was betraying obligations to keep that
24 information secret, that he did it knowing that Walters would
25 illegally trade on the information, and that he did it in part

H3F3WAL1

Opening - Mr. Ferrara

1 because Walters was giving him almost \$1 million in loans.

2 You're also going to see charts and documents that lay
3 out Walters' trades and his phone calls. Those documents and
4 charts alone will show you that Walters was committing insider
5 trading. Those records will show a pattern of insider trading
6 by Walters.

7 Those records will show again and again Walters would
8 receive a phone call from Davis, the insider with access to the
9 secret info, and then, sometimes just minutes later, just
10 minutes after speaking to Davis, Walters would call his
11 stockbroker and make a huge trade in the stock of Dean Foods.

12 That, ladies and gentlemen, is called insider trading.
13 It is cheating, it is securities fraud and wire fraud, and it
14 is a serious crime.

15 And that's why we're here today. Because Walters
16 broke the law again and again and again by placing his own
17 greed over the laws designed to make the stock market fair.
18 And the law finally caught up with him.

19 Now, this opening statement is our chance to tell you
20 a little bit about what the case is about, what the evidence
21 will show, and how we're going to prove it to you. So I just
22 gave you a sense of what the case is about, let me now talk a
23 little bit about what the evidence will show.

24 First, you're going to learn how Walters and Tom Davis
25 came to know and trust one another. Walters and Davis first

H3F3WAL1

Opening - Mr. Ferrara

1 met in the mid '90s during a golf tournament. They became
2 friends based on their shared interest in business and sports.
3 They play golf together a few times a year, they socialize
4 occasionally, and as they became better friends, they started
5 to discuss doing business together.

6 You'll hear that in 2001, Davis joined the board of
7 directors of Dean Foods. That's the milk company I mentioned
8 earlier. And a director or a board member is a person who is
9 hired by the company to do things like help oversee the
10 company's business and vote on big decisions the company makes.

11 And being on the board of directors meant that Davis
12 had access to secret, sensitive information about Dean Foods
13 and its business. Information he had an obligation to keep
14 confidential. Information that would be a goldmine in the
15 wrong hands, like Walters' hands.

16 And that's exactly what happened. In total violation
17 of his obligations to his own company, Tom Davis agreed to
18 repeatedly give Walters inside information so that Walters
19 could make money through insider trading. Important
20 confidential information about the company's business
21 performance before it was announced to the public, important
22 confidential information about the company's strategies and
23 plans, and ultimately, specific and secret information about
24 the company's plan to split itself into two separate companies,
25 which finally happened in 2012.

H3F3WAL1

Opening - Mr. Ferrara

1 Now, many of the instances of insider trading you'll
2 hear about in this trial revolved around Dean Foods' quarterly
3 earnings. I want to just take a minute to explain what
4 quarterly earnings are, because they'll be important during
5 trial.

6 So Dean Foods was a public company, which means its
7 shares or stock was traded on a public exchange, like the New
8 York Stock Exchange. Like all publicly traded companies, every
9 few months, Dean Foods compiled its earnings, basically its
10 performance, and was required to report those earnings every
11 three months, so every quarter of the calendar year. The
12 information would be filed in a report with the SEC, that's the
13 government watchdog that polices Wall Street. And when the
14 report was filed, that information became available to the
15 public.

16 So every three months or so, Dean Foods would gather
17 up from all over the company their sales information, their
18 revenue information, their costs, so they could put it all
19 together and they could tell the public. And they made this
20 announcement to everyone at the same time, which you'll learn
21 is required by law. It is a law designed to keep the stock
22 market fair.

23 Now, why is it so important that this earnings
24 information, this quarterly information go to everyone at the
25 same time? Well, you'll hear that financial information like

H3F3WAL1

Opening - Mr. Ferrara

1 this, it has a major impact on the stock price of a company.
2 Investors and Wall Street professionals who follow companies
3 like Dean Foods, they make predictions about a company's
4 performance based on their own analysis and information
5 available to the public.

6 So if Dean Foods' earnings information is coming in
7 above where the market expects it to be, the stock price of the
8 company is very likely going to go up, because people are
9 surprised by how well the company is doing. On the other hand,
10 if that earnings information is coming in below where the
11 market expects it to be, the price stock is very likely to go
12 down, because people are surprised by how poorly the business
13 is doing.

14 So, again, if you know, if you can get an unfair
15 advance preview of Dean Foods' earnings performance, because
16 someone is illegally sharing inside information with you, you
17 can make a lot of money in the stock market. And that's what
18 Walters did. You are going to see it in the documents, and
19 you're going to hear it in the testimony.

20 You'll see a pattern, and the pattern went like this:
21 Davis would tell Walters some confidential thing that Dean
22 Foods was going to announce in the future. Walters would call
23 his broker and illegally trade on that information. Dean Foods
24 would make the announcement that Walters expected, and Walters
25 would come out ahead. Way ahead. That's insider trading.

H3F3WAL1

Opening - Mr. Ferrara

1 That's simple.

2 So, let me give you some specific examples of Walters'
3 pattern of insider trading. And to be clear, any one of these
4 examples is itself illegal. And you're going to hear about
5 many more throughout the course of the trial, but I just want
6 to give you a few examples.

7 So, for example, Dean Foods planned to publicly
8 announce in April 2008 that its earnings were higher than
9 expected. That would be good news, pushing the stock price up.
10 In the weeks leading up to that announcement, Davis told
11 Walters before the public knew. You'll see records of phone
12 calls Walters made and received, and you'll see that Walters
13 and Davis spoke on the phone in March. Just minutes later,
14 just minutes after hanging up with Davis, Walters called his
15 stockbroker, and throughout that day and the next, bought over
16 half a million shares of Dean Foods for just over \$20 a share.
17 You'll have the trading records. That's over \$10 million worth
18 of Dean Foods stock.

19 In April, Dean Foods publicly announced that its
20 profits were better than expected and its stock price went up
21 just like Walters expected, and he cashed in. He sold a bunch
22 of his Dean Foods stock and made over \$1.2 million in profits.
23 That was a crime.

24 Here's another example of the pattern of insider
25 trading. In June 2008, Davis learned that Dean Foods was again

H3F3WAL1

Opening - Mr. Ferrara

1 beating its earnings expectations, that is to say, Dean Foods
2 was making more money than the public expected it to. Really
3 good. And when the public learned, the stock price would go
4 up. But again, no one outside the company was supposed to know
5 that information. But Davis again told Walters, Davis told
6 Walters that Dean Foods was doing better than Wall Street
7 professionals expected it to do, and Walters illegally profited
8 from that confidential information. And again, you'll see a
9 lot of this in the documents. For example, you'll see phone
10 records showing that Davis called Walters on the evening of
11 June 18. The very next morning, Walters called his stockbroker
12 and started buying Dean Foods stock.

13 The trading records will show that over the course a
14 few days, Walters bought almost 4 million shares of Dean Foods
15 stock. Then Dean Foods publicly announced the good news that
16 business was doing better than expected, and the stock jumped.
17 Walters made \$3 million.

18 You'll see this pattern time and again: Call from
19 Davis, trade by Walters, announcement, profit.

20 So why was Davis doing this? Well, he's going to tell
21 you. And I expect you'll learn that Davis gave Walters this
22 inside information because it strengthened their friendship,
23 and Davis believed if he did, Walters would help him out down
24 the road. You scratch my back, I'll scratch yours. And that's
25 in fact what happened.

H3F3WAL1

Opening - Mr. Ferrara

1 In April 2010, Davis called in a big favor. The
2 evidence is going to show that at that time Davis was in dire
3 financial straits, he couldn't pay his debts. Davis knew a
4 bank wouldn't give him a real loan, so where could he get the
5 money? Well, from the guy he had been feeding inside
6 information to for a couple of years, Billy Walters. Walters
7 owed Davis big time.

8 So the two met privately at Walters' golf club in Las
9 Vegas on April 9, 2010. During that meeting, Walters agreed to
10 loan Davis \$625,000 through a friend. Davis was enormously
11 grateful to Walters for the loan, and in their world of I
12 scratch your back, you scratch mine, Davis knew that Walters
13 expected something in return. At that same Las Vegas meeting,
14 at that same meeting where Davis had asked Walters to loan him
15 money, Davis also passed some important inside information to
16 Walters about Dean Foods.

17 Specifically, Davis told Walters that Dean Foods was
18 seriously considering spinning off a part of its business
19 called WhiteWave. So, let me take a moment and explain what
20 these spinoff plans were and why they were so important and
21 secret. It's not complicated.

22 You'll hear that Dean Foods was a large company, with
23 a few different lines of business. One of those business lines
24 was called WhiteWave. WhiteWave was the part of Dean Foods
25 responsible for brands like Horizon organic milk and Silk soy

H3F3WAL1

Opening - Mr. Ferrara

1 milk. The idea of a spinoff was that Dean Foods wanted to make
2 WhiteWave its own business with its own stock, and then
3 distribute WhiteWave stock to Dean Foods shareholders. That's
4 what the concept of a spinoff is. So, it would be really
5 valuable to own Dean Foods stock if the spinoff ultimately
6 happened.

7 And as you'll learn during the course of this trial,
8 the concept of spinning off WhiteWave had been discussed for a
9 few years as a future possibility. But by April 2010, it was
10 getting some legs. Dean Foods had taken the step of asking
11 outside bankers to analyze how it could be done. That itself
12 was a highly secret piece of information, something that Dean
13 Foods board members, including Tom Davis, had an absolute legal
14 duty not to disclose to anyone outside the company. But that's
15 exactly what Davis told Walters in Las Vegas when he asked
16 Davis for a loan.

17 And not surprisingly, given the corrupt scheme between
18 Davis and Walters, on the very first day after their Vegas
19 meeting, Walters bought one million shares of Dean Foods. The
20 trading records show it plain as day. Walters bought one
21 million shares of Dean Foods stock. That is a lot of stock.
22 And it cost him almost \$17 million. But Walters was happy to
23 pay it, because he was acting on the secret information
24 illegally given to him by Davis.

25 In fact, a couple days later, Walters bought another

H3F3WAL1

Opening - Mr. Ferrara

1 half million shares of Dean Foods stock. And this is another
2 example of Walters' insider trading. And another example of
3 the insider trading scheme happened not too long after that,
4 because Davis learned something bad.

5 Not long after the Vegas meeting, Davis learned that
6 Dean Foods' business was doing worse than the public thought.
7 And again, that was secret information. And Davis knew that
8 when the public found out, the price of Dean Foods stock would
9 go down. But Walters had just bought Dean Foods stock. If he
10 held onto that stock, he'd lose a lot of money when Dean Foods
11 announced that earnings were worse than expected. So now Davis
12 had to warn Walters that the company stock might have to take a
13 hit. He had to warn him right away, and the phone records show
14 he did just that.

15 The phone records, which you'll see during trial, show
16 that shortly after Davis learned the bad information, he placed
17 a phone call to Walters. And the trading records will show
18 that the very next morning, after that phone call, Walters
19 started selling all his Dean Foods stock like it was on fire.
20 He had gotten rid of all of it by the next day.

21 So a week later, Dean Foods in fact publicly announced
22 the bad news, that its earnings were worse than expected,
23 information that Walters already illegally knew. And the stock
24 price dropped a whopping 30 percent. By selling his stock
25 before that announcement, Walters avoided losing over \$7

H3F3WAL1

Opening - Mr. Ferrara

1 million.

2 But that's not all. You see, Walters still wanted to
3 own Dean Foods stock going forward, because Davis had told him
4 about the likelihood of a WhiteWave spinoff, and that would
5 lead to big, big profits for people who own the stock. So one
6 week after Walters had conveniently sold off all of his Dean
7 Foods stock to avoid losses, on the very day that Dean Foods
8 announced the bad news about its quarterly earnings and its
9 stock price dropped 30 percent, Walters started to repurchase
10 his 1.5 million shares of Dean Foods stock. But this time, at
11 a much cheaper price. At a way cheaper price, because the
12 stock price had dropped.

13 So by trading on secret inside information he got from
14 Davis, it was a double win for Walters. First, he avoided huge
15 losses. And second, he was able to buy back the stock cheaper
16 than ever. So he was perfectly positioned to profit even more
17 once the WhiteWave spinoff happened.

18 So think about that. As the evidence will show,
19 Walters literally sold the stock just low enough to avoid
20 getting crushed by the bad earnings announcement that Davis had
21 warned him about, and he was right back in the market happily
22 buying Dean Foods stock.

23 Was this all a coincidence? Of course not. Was
24 Walters a trading genius knowing exactly when to sell high and
25 buy low? Absolutely not. He was a cheater trying to look like

H3F3WAL1

Opening - Mr. Ferrara

1 a genius. He was the kid who aces the test because someone
2 gave him the answers beforehand.

3 Meanwhile, while Walters was cheating through years of
4 repeated insider trading, you'll learn that Tom Davis was
5 growing more financially desperate. By the middle of 2011,
6 Davis had already burned through the \$625,000 loan he had asked
7 Walters for a year earlier. Davis had spent all that money and
8 he was so desperate for cash, you'll learn he even embezzled
9 money from a charity he ran, and then he turned again to
10 Walters. After all, Davis had been helping Walters out with
11 all these inside tips, it was time for him to ask Walters for
12 some back scratching.

13 Walters, you'll hear, loaned Davis another \$350,000
14 during the same period of time that Davis was continuing to
15 share secret inside information with him. So, by the spring of
16 2012, Davis owed Walters almost a million dollars, and was not
17 making any payments on that debt, because Davis was repaying
18 the loan in a different way: By feeding Walters inside
19 information worth millions of dollars.

20 So, throughout 2012, Davis continued to give Walters
21 realtime updates about the status of the WhiteWave spinoff.
22 Throughout 2012 Davis fed Walters secret details like whether
23 the spinoff would in fact happen, when it would happen, how it
24 would happen, and how much it would be worth.

25 And you'll hear that Walters held onto his Dean Foods

H3F3WAL1

Opening - Mr. Ferrara

1 stock for much of 2012, because Davis was giving him these
2 realtime updates and making sure Walters knew when he'd get the
3 biggest payout.

4 When Walters finally sold his Dean Foods stock in May
5 of 2013, it was worth about \$110 million.

6 The evidence will also show that Walters wanted his
7 friends to trade in Dean Foods, too, because Walters knew he
8 had a sure thing in Tom Davis. An inside man who could feed
9 him the most valuable secret information around. And you'll
10 see that some of Walters' friends also bought Dean Foods stock
11 after calls from Walters, like his business associate Luther
12 James and the golfer Phil Mickelson. That's another way you
13 know that Walters had the hottest information in town.

14 Okay, so I've talked a lot about Dean Foods. But the
15 evidence will also show that Walters committed insider trading
16 with respect to a second company, Darden Restaurants. And the
17 documents and the testimony will show that Walters illegally
18 bought Darden stock based on inside information from Davis,
19 just like he did with Dean Foods, and that Walters made a cool
20 million bucks in just a few months.

21 So, that's what you'll learn in this case. That over
22 the course of about six years, Walters benefited about over \$40
23 million by illegally trading based on inside information he
24 received from Tom Davis.

25 So, let's talk for a few minutes about how we're going

H3F3WAL1

Opening - Mr. Ferrara

1 to prove this to you. So you are going to hear from witnesses,
2 and you're going to see documents. Let's start with the
3 witnesses.

4 You'll hear from witnesses at Dean Foods and Darden
5 Restaurants, they're going to explain that Tom Davis in fact
6 possessed confidential, non-public information. They'll
7 explain why it was so important for the companies and for board
8 members like Davis to keep this information absolutely secret
9 so that no one could gain an illegal edge and cheat in the
10 marketplace.

11 You'll hear from the Dean Foods CEO who will explain
12 why the information that Davis passed to Walters was so
13 important, and how it could affect the company's stock price
14 and decisions that the company made.

15 You'll hear from Walters' stockbrokers about Walters'
16 trading. You'll hear from an employee of FINRA, another Wall
17 Street watchdog, and an FBI special agent. They'll walk you
18 through Walters' trading and phone records, which vividly
19 demonstrate Walters' guilt.

20 Those charts alone, ladies and gentlemen, will show
21 you in black and white how Walters committed insider trading.
22 They tell the whole story.

23 And you'll hear from Tom Davis. Now, as I said, Davis
24 will tell you that he passed inside information to Walters lots
25 and lots of times over the course of their conspiracy. And

H3F3WAL1

Opening - Mr. Ferrara

1 Davis will also tell you that he sometimes passed that inside
2 information to Walters using a prepaid cell phone that Walters
3 had given him. Now, the prepaid cell phone, sometimes called a
4 burner phone, is a cell phone that doesn't have your name
5 associated with it, and isn't linked to you so it's harder to
6 trace. Davis called it the bat phone. Walters told Davis that
7 they should use the phone to discuss Dean Foods because it was
8 safer to avoid leaving a trail of phone records that law
9 enforcement could follow. And Walters actually went further,
10 suggesting a code in which they would refer to Dean Foods as
11 the Dallas Cowboys. And that was a good code word because Dean
12 Foods was based in Dallas, and it is also where Tom Davis
13 lived.

14 And Walters himself also sometimes used his own
15 prepaid cell phone to get inside information from Davis about
16 the WhiteWave spinoff. So, it was a good plan to avoid getting
17 caught, if both of them kept their crimes a secret.

18 And Davis will tell you that he kept that secret for a
19 long time. He denied his involvement to everyone who asked
20 him. Davis lied to FBI agents in 2014 when they went to his
21 home, denying that he had committed insider trading with
22 Walters. He later lied to the SEC about the same thing.
23 Shortly after the meeting with the FBI, Davis threw the bat
24 phone into a creek near his house to destroy it.

25 Now, ladies and gentlemen, let me be clear up front

H3F3WAL1

Opening - Mr. Ferrara

1 about Tom Davis. This is a man who committed serious crimes.
2 Davis will tell you, among other things, that he knew it was
3 illegal for him to pass the inside information to Walters. It
4 was wrong, it was a crime, a conspiracy that he and Walters
5 participated in together. And for a period of time, Davis
6 tried to cover up and lie about his crimes and Walters' crimes
7 and keep their secrets. But, it's hard to stick to a lie for
8 that long, and law enforcement started closing in.

9 Davis couldn't keep a secret anymore. He admitted
10 what he had done and he accepted responsibility for his crimes.
11 Davis will tell you that he has been arrested and pled guilty
12 to insider trading, obstructing justice for destroying the cell
13 phone and lying to the FBI, and perjury for lying to the SEC.
14 Davis also will tell you that he's now cooperating with the
15 government, and testifying because he hopes to receive leniency
16 at sentencing.

17 When you see and hear from Davis, you may not like
18 him, and you certainly will not approve of the things he's
19 done. But the only relevant question for you in evaluating his
20 testimony isn't whether you like him, but whether you believe
21 he's telling the truth.

22 So, please, listen very carefully to his testimony.
23 Compare his testimony with the other evidence, and see if his
24 testimony fits with that other evidence. When you do, you will
25 find that Davis' testimony fits with the other witnesses, and

H3F3WAL1

Opening - Mr. Ferrara

1 is backed up by the trading records and phone records and
2 e-mails and other documents demonstrating the pattern of
3 illegal insider trading of inside information flowing from
4 Davis to Walters, and of Walters' trading on the inside
5 information to cheat and personally benefit to the tune of \$40
6 million.

7 In addition to hearing from witnesses I mentioned,
8 you'll see documents. I've mentioned some of those, phone
9 records showing calls between Davis and Walters, those trading
10 records showing how quickly Walters began buying or selling
11 stock, sometimes just minutes after receiving the information
12 from Davis. You'll see the size of some of these massive
13 trades, just massive purchases and sales of Dean Foods stock
14 made by Walters based on the illegal edge that regular
15 investors didn't get to have.

16 Now, at the close of this case, we're going to have an
17 opportunity to talk to you again. And between now and then,
18 we're going to ask you to do three things. First, please pay
19 careful attention to the evidence. Second, follow Judge
20 Castel's instructions on the law. And third, use your common
21 sense, the same common sense you use in your lives every day.
22 If you do those three things, Walters will get a fair trial,
23 the government will get a fair trial, and you'll reach the only
24 conclusion consistent with the evidence in this case: That the
25 defendant, William Walters, is guilty as charged.

H3F3WAL1

1 Thank you.

2 THE COURT: Thank you, Mr. Ferrara.

3 Ladies and gentlemen, please stand up and stretch.

4 And let me ask you, we're going to have as I understand an
5 opening statement by Mr. Berke in a moment. Would you like a
6 break before that or are you ready to go on and we can take the
7 break after the opening statement?

8 JUROR: Go on.

9 THE COURT: All right, let's do that. Terrific. But
10 sometimes it feels good to just stretch a little bit.

11 JUROR: I can't get up, I'm sorry.

12 THE COURT: That's fine.

13 JUROR: From shoveling.

14 THE COURT: All right. Ladies and gentlemen, we're
15 just going to take care of an administrative task, and
16 Mr. Deputy, you can proceed with that.

17 THE MARSHAL: For all of you standing up and the
18 people sitting in the back on the bench have to get up and go
19 upstairs, 14D.

20 THE COURT: That's enough. 14D, just go to 14D.
21 Thank you very much. Outside, please. No talking in the
22 courtroom. Outside.

23 (Continued on next page)

24

25

H3F8WAL2

Opening - Mr. Berke

1 THE COURT: Mr. Berke, you may begin.

2 MR. BERKE: Thank you, your Honor.

3 Good afternoon.

4 A long time ago a man left a small town in Greece to
5 travel to the capital Athens with a plan to steal the riches of
6 others. When he reached the gate of Athens, the guard asked
7 him his business. He falsely said he was there to see old
8 friends because he used to be from Athens. The guard inquired,
9 "Are you going to visit Piraeus?" The man falsely and
10 confidently said, "But of course, he is very close to me, like
11 a cousin." The guard looked at the man and said, "Arrest him,"
12 and told the surprised imposter that Piraeus is the oldest port
13 in Athens and he would have known that if he was telling the
14 truth.

15 Members of the jury, my name is Barry Berke, and with
16 my colleagues, I have the great honor of representing Bill
17 Walters.

18 I begin with that old Greek fable because it explains
19 a lot about why we are here today. Aesop, an ancient Greek
20 fabulist, explained that the moral of that story is, when
21 somebody tells a falsehood or a lie, they are required to tell
22 more falsehoods in order to prevent the truth from coming out,
23 and ultimately it's those additional falsehoods that lead the
24 person to be found out.

25 You see, what you're going to hear is that the

H3F8WAL2

Opening - Mr. Berke

1 prosecution's star witness, Tom Davis, was in a desperate
2 situation. He got caught stealing from a charity that he was
3 involved with, lying about it, cheating on his taxes, all sorts
4 of things, and he knew the only way he could avoid the
5 consequences of his actions was to falsely accuse Mr. Walters.
6 And when he did that -- because Mr. Ferrara said it's hard to
7 tell a lie -- he had problems, so he started telling more lies
8 and more lies and more lies, and you're going to hear about
9 them. And like the man in the old Greek story, those lies are
10 going to cause him to be found out by you, the guards of the
11 gate of justice for Mr. Walters.

12 Let me tell you more of what you're going to hear.
13 Tom Davis, Harvard Business School trained investment banker,
14 with a taste for cards, was dealt a very bad hand. He got
15 caught cheating a charity that was supposed to benefit battered
16 women as his own personal piggy bank. He got caught lying
17 about it. He got caught cheating on his taxes. He is
18 prosecuted. The FBI were looking into all of that. He was
19 afraid about being charged with insider trading. He was afraid
20 about losing what money he had that still funded his
21 extravagant lifestyle. He was concerned about his reputation
22 in Dallas, where he was part of the business elite, and
23 believed that if people found that he had taken from this
24 charity, where he hosted a big golf tournament, that he would
25 never recover. And he was concerned about serving a very

H3F8WAL2

Opening - Mr. Berke

1 lengthy jail sentence.

2 So you will hear that what he did is he went in and
3 met with the prosecutors, and he told people that he knew the
4 only way he could get out of his problem, the only way he could
5 avoid the consequences of his acts, was to tell a story about
6 Mr. Walters, and he falsely claimed that he gave him illegal
7 inside information. I am going to talk more about that in the
8 opening statement about what you will hear. And we are going
9 to prove during this trial, through incontrovertible
10 documentary evidence, testimonial evidence, and pure common
11 sense, that he is lying about every allegation in his whole
12 story.

13 Now, I have no doubt, when he is on direct
14 examination, being asked questions by these prosecutors, he is
15 going to tell a smooth story, like the smooth-talking
16 investment banker he used to be. But on cross-examination, we
17 are going to get to confront him with everything that doesn't
18 make sense, the facts that inconveniently show his lies, the
19 logic that doesn't make sense, his prior inconsistent
20 statements that were exactly the opposite. And I submit to
21 you, members of the jury, as you hear his testimony, you may
22 think of the famous Mark Twain quote that a lie travels halfway
23 around the world before the truth is putting on its shoes.

24 I would submit to you a corollary of that quote is
25 that it doesn't take much time to tell a lie, but it takes a

H3F8WAL2

Opening - Mr. Berke

1 while to unravel. And we are going to unravel every single lie
2 Tom Davis is going to say here. You're going to see it.
3 You're going to feel it. You're going to know it.

4 Now, as many of you know, this week starts March
5 Madness, the big college basketball tournament. And I want you
6 to imagine for a moment that you're invited to a March Madness
7 party by a friend, and they tell you as you walk in that
8 someone who is widely recognized as the world's greatest sports
9 gambler and one of the world's best poker players was at the
10 party.

11 Now, I would bet that all of us would decline to bet
12 on the games against this person. We would not want to play
13 poker with him. But we would probably want to see his
14 brackets, who he was picking to win the games, or watch him
15 play cards. But we would assume that that person understands,
16 has experience about sports betting and poker that's far more
17 advanced than us. We would assume that he has worked harder to
18 become the best in the world. We would assume that he is
19 better able to evaluate and identify tells, subtle clues that
20 aren't obvious, about who might win a game or what is going on
21 in a poker game. We would assume that that person has a very
22 different appetite for risk than us.

23 And I tell you that because what you're going to hear
24 is that Mr. Walters took the same skills that made him so
25 successful in sports gambling and poker and he applied them to

H3F8WAL2

Opening - Mr. Berke

1 investing, and it explains a lot of what the prosecution is
2 pointing to for you to look at.

3 The prosecution might ask: Who would bet tens of
4 millions of dollars on a single trade or a single stock when
5 they didn't have illegal inside information? Bill Walters
6 would. And he did it again and again and again, having nothing
7 to do with these allegations. He did it long before the
8 alleged conspiracy and during. That's how he invested in the
9 stock market. That's how he made bets.

10 The prosecution might ask: Who would make
11 split-second decisions to take a very large position in a
12 stock, even though their information was proper? Again, you're
13 going to hear Bill Walters did it again and again, and you will
14 see the evidence of that.

15 The prosecution might ask: Who would make big bets in
16 the stock market based on tells, something that they see in the
17 movement of the stock price, like the betting line, or tells
18 from investment professionals or others associated with the
19 company? Again, drumroll, please. You're going to hear Bill
20 Walters. And you will see it and you will learn a lot about it
21 again and again.

22 Let me step back. What you're going to hear is that
23 Bill Walters was born 70 years ago in Munfordville, Kentucky.
24 He grew up very poor, raised by his grandmother. At a young
25 age he started working jobs, and he started gambling in the

H3F8WAL2

Opening - Mr. Berke

1 pool hall, and he found that he had a real aptitude for it.

2 He graduated high school, began working in Kentucky in
3 an automobile dealership, and then decided to move his family
4 to Las Vegas and pursue his passion full time for sports
5 gambling, poker, and the like. As you probably know, in Las
6 Vegas, it's a big industry, heavily regulated, as you heard
7 from Judge Castel at the beginning.

8 And Mr. Walters did very, very well, as you will hear,
9 and had a lot of success, became quite well-known, and that's
10 what, again, led him to often be referred to as one of the
11 world's greatest, if not the world's greatest sports gambler.
12 He won the World Series of poker, which is an event of poker
13 players, and again, helped cementing his reputation.

14 Now, what you will hear is Bill and his wife Susan,
15 who he has been married to for 40 years, they started a
16 business called The Walters Group. And what Mr. Walters tried
17 to do is take the same skills that he used in sports gambling
18 and poker and apply them to business. And they bought
19 automobile dealerships in his home state of Kentucky, all over
20 the country, car rental agencies, golf courses, real estate
21 companies, all sorts of businesses, applying the same skills
22 that led to his success in sports gambling and poker, and they
23 had a lot of success. Together, The Walters Group helped Mr.
24 Walters and Susan Walters be worth hundreds of millions of
25 dollars, they employ thousands of people, and the business does

H3F8WAL2

Opening - Mr. Berke

1 very well.

2 As I mentioned, Mr. Walters also applied those same
3 skills and techniques that he had honed in gambling to
4 investing in the stock market. And you will hear Mr. Walters
5 was drawn to the stock market because you could have a much
6 larger bankroll than in sports betting. As you will hear, in
7 sports betting there are limits as to how much you can play on
8 a game because you need equal action on the other side. In the
9 stock market, particularly for liquid stocks that have a lot of
10 shares, you can invest a lot more money. And what you will
11 hear as well is that banks were more than happy to lend Mr.
12 Walters a lot of money to do those investments, at a low rate
13 of interest, because he was such a good customer.

14 You will hear that over the period we are talking
15 about, 2008 to 2014, Mr. Walters invested in close to a hundred
16 different companies. And what he would do with these companies
17 is he would invest in them over a period of time, often looking
18 for the moment when there would be action involving those
19 companies, earnings announcements or other significant events,
20 where you would either win or lose and you would make that bet.

21 And in order to make those decisions, Mr. Walters
22 applied the same techniques, the same work ethic that you are
23 going to hear about, to learn everything he could about those
24 companies and stocks that he invested in. So what he would do
25 is he would really immerse himself, individually and with

H3F8WAL2

Opening - Mr. Berke

1 investment professionals, to learn the industries and the
2 companies he was looking at.

3 So, for example, for Dean Foods, which was principally
4 a fluid milk company at the time, he tried to understand
5 everything he could about the dairy industry and how the
6 company and the industry are affected by changing milk
7 commodity prices; grain prices to feed the cows; resin prices
8 for the containers around the milk; diesel fuel prices to run
9 the machines; currency fluctuations, because you will hear
10 there are a few countries across the world that can help
11 determine whether milk sells at a good price or not; weather,
12 drought can have a big impact; and a whole host of other
13 factors that he would try to understand so that he could know
14 what to do with the stock.

15 Mr. Walters also tried to understand how Wall Street
16 treated the industry and the stock. Because, again, like in
17 sports betting, when it's most important to understand the
18 betting line, understanding how Wall Street was looking at the
19 company, and how that might affect the stock price, could also
20 be very helpful in determining what is a good bet or a bad bet.

21 You will hear he also spoke to investment
22 professionals, a lot of them. He often had them compare
23 various ideas and advice and the like. And as you hear all the
24 evidence of what he did constantly, including with Dean Foods,
25 when he supposedly had the answers to the test, you may ask

H3F8WAL2

Opening - Mr. Berke

1 yourself, Why is he doing all of this if he knows the answer?
2 And I submit to you you will see it's because Tom Davis is
3 lying, and he really didn't.

4 But what you are going to hear is that Mr. Walters had
5 a bank of computers in his office, and used them for gambling,
6 his business, The Walters Group, as well as investing. And he
7 often chose the companies and came across the companies that he
8 decided to invest in based on how he learned about them from
9 people who had something to do with it who he respected and
10 trusted. So, for example, they may be an investor in the
11 company, they may be a founder of the company, or they may be
12 in management of the board. And you will hear that when
13 Mr. Davis was interviewed by the FBI, when they showed up and
14 surprised him on his doorstep, he specifically said that he
15 understood the reason why Mr. Walters invested in Dean Foods is
16 because Mr. Walters respected Mr. Davis, trusted Mr. Davis, had
17 confidence in Mr. Davis.

18 You're also going to see that Mr. Walters made big
19 bets, as I said, tens of millions of dollars at a time, went in
20 quickly, when he decided to do it, in all of the stocks, having
21 nothing to do with this case, and you will also hear he made a
22 lot of bets based on tells. For example, if he saw something
23 unusual happening with the stock price, he would assume that
24 something was going on on Wall Street, that the big Wall Street
25 firms may know something, and he would look at that.

H3F8WAL2

Opening - Mr. Berke

1 He would look for tells from other investment
2 professionals and people associated with the company, stock
3 sales, stock purchases, those sorts of things, and he would
4 make decisions. And you are going to hear a lot about that,
5 see how he traded again and again and again, and understand why
6 he did it and how he did it.

7 Let me turn now and talk to you about Tom Davis.

8 First, let me tell you that Tom Davis, as Bill Walters
9 knew him at the time, Tom Davis presented himself as a very,
10 very impressive person. He was a navy veteran. True. After
11 the navy, he graduated from Harvard Business School. He went
12 to work for the one of the great investment banks, known as
13 DLJ. He ran the Dallas, Texas office and was in charge of all
14 investment banking in the southeast region. He did big deals,
15 names you would know, big people. When DLJ got sold to an
16 international investment bank, Credit Suisse, he took a big
17 payout, and wasn't shy about talking about the lucrative payout
18 he received.

19 He was the part owner of two sports teams, the Texas
20 Rangers and the Dallas Stars, and talked a lot about that. He
21 owned multiple homes. He co-owned his own airplane that he
22 flew across the United States. He belonged to four prestigious
23 golf courses. He was the pillar of the community in Dallas,
24 well-known. I told you he threw this big golf tournament,
25 charitable golf tournament, of professional golfers, became

H3F8WAL2

Opening - Mr. Berke

1 well-known for that. And he was somebody with a big reputation
2 in Dallas.

3 You will hear it is what led Dean Foods to make him
4 chairman of the board, because he persuaded people how
5 impressive he was, how knowledgeable he was about Wall Street
6 generally, what a good resource he was.

7 What you are going to hear is unknown to Mr. Walters,
8 unknown to all these other people he fooled, including people
9 on the board of Dean Foods. Mr. Davis had a dark side. He
10 used this charity, this golf tournament, to benefit a shelter
11 for battered women as his own personal piggy bank, committed
12 tax fraud, committed other crimes, including stealing and lying
13 to Mr. Walters, his purported co-conspirator. You will hear he
14 had other issues. You will hear that he lived above his means,
15 both his lifestyle and his exercises of excess.

16 Mr. Walters, who got to know Mr. Davis better,
17 Mr. Davis had one of his homes in Southern California, near
18 where Bill and Susan Walters had their home, and they would
19 socialize with Mr. Davis and his then wife Louise, and they
20 would see each other and play golf and the like.

21 What you are going to hear is that Mr. Walters and the
22 president of The Walters Group, a fellow by the name of Mike
23 Luce, who you will hear about, they at one point were looking
24 to buy golf courses in Texas and needed some advice about
25 financing and the like, and they spoke to Mr. Davis, and they

H3F8WAL2

Opening - Mr. Berke

1 were very impressed with him. He was knowledgeable about Wall
2 Street, about business, gave them very good advice, and
3 counseled them. He was helping them. They ultimately didn't
4 do the deal, but they gained trust in Mr. Davis and his
5 judgment, his probing, his financial knowledge.

6 And over time you are going to hear that Mr. Davis
7 brought business deals to them, something you are going to hear
8 about called Periscope Holdings, a software company. You will
9 hear about Park Cities Bank, an effort of a bank that had a
10 problem with ownership. They can recapitalize and take it
11 over, a lucrative opportunity in Texas. Something called
12 Benefit Harbor.

13 What you will hear is for all those investments, Mr.
14 Walters and Mike Luce believed that Mr. Davis was giving them a
15 benefit, because it was such a good business opportunity and
16 had good return, applying a risk/reward, as Mr. Walters always
17 did, using the same technique and background that he had.

18 And you are going to hear that Mr. Davis at the time,
19 contrary to what he may be claiming now, viewed these
20 investments as benefits as well for Mr. Walters and The Walters
21 Group, and you will hear that.

22 Now, what happened? The government's argument is
23 supposedly for many years he is giving illegal inside
24 information, committing a crime, just because he wants to be
25 friends and who knows. You are going to evaluate that whole

H3F8WAL2

Opening - Mr. Berke

1 story that Mr. Davis was peddling to them.

2 But what happened is in 2010, Mr. Davis went to Mr.
3 Walters and said he had a bit of an issue. He had a costly
4 divorce with his second wife Louise that took half his liquid
5 assets, and that most of his other substantial assets were tied
6 up in illiquid investments, like the two sports teams, which he
7 thought would be sold, and stock and other things. So he asked
8 Mr. Walters would he mind loaning him money. And you're going
9 to hear that Mr. Walters regularly loaned people money or
10 arranged for loans. He did it for people just like Mr. Davis,
11 friends and business contacts. He did it for simply personal
12 friends. He did it for employees, people who worked at his
13 golf courses. He regularly did it. He was known for doing
14 that.

15 So Mr. Walters said he would help him. He put him in
16 touch with Luther James, an old friend of Mr. Walters, who is
17 also quite wealthy, who had a lot of cash and often did loans
18 in order to get the rate of return; and, in fact, regularly
19 loaned Mr. Walters money himself for business deals, gambling
20 and the like.

21 So they did a loan. It was an interest rate loan, in
22 writing, nothing suspect about it. And you will see over a
23 period of time, well into a year, Mr. Davis was falling behind
24 in the interest payments. Said again, liquidity issues, cash
25 flow, soon he will be able to sell stock, the sports teams will

H3F8WAL2

Opening - Mr. Berke

1 be sold, he will be fine. And Mr. Walters agreed to take over
2 the loan. But he said, but because you're having trouble
3 paying, I am going to increase the interest rate. So it was a
4 higher rate of interest. Again, it was documented. It was on
5 the books of The Walters Group. It was audited by their fancy
6 accounting firm that did their books.

7 You are going to hear that for sports gambling in Las
8 Vegas you had to use cash at that time, that was the rule and
9 the law. So Mr. Walters and his business had a lot of cash,
10 and supposedly he could have given a payoff to Mr. Davis, if he
11 was really getting illegal information, he could have given a
12 suitcase of cash, but instead he gave a market rate loan fully
13 documented. And you will ask yourself and evaluate whether
14 that makes sense to you.

15 In any event, you are going to also hear that after
16 that loan, that Mike Luce, the president of The Walters Group,
17 and Mr. Walters regularly asked Mr. Davis, When are you going
18 to pay off the loan? When are you going to pay off the loan?
19 And Mr. Davis said, Well, I will pay it out of these
20 investments we have together, or something else. And that went
21 on, and you will see evidence of that, and you will ask
22 yourself again, if this was some payoff, why are they
23 collecting this loan?

24 Now, I am going to submit to you the prosecution said
25 something very interesting, and again, it's based on the lies

H3F8WAL2

Opening - Mr. Berke

1 of Mr. Davis. They said there was another loan. Let me tell
2 you about that.

3 There was an investment in a company called Park
4 Cities, that was this bank recapitalization that I told you
5 about. It was a great opportunity. You will hear that. A lot
6 of people were interested. And Mr. Davis persuaded The Walters
7 Group -- Mike Luce, Bill Walters -- to invest \$400,000. It was
8 going to be a line of credit to draw down to do the work
9 necessary for the deal, and in return they would get equity in
10 the company back, the bank, or Mr. Davis would have to pay it
11 back. And what Mr. Davis did is he proceeded to steal that
12 money and lie about it. Instead of using it for Park Cities,
13 like he told everyone he was going to do, he used it to pay off
14 his own personal debt and other expenses he had. And you will
15 ask yourself, if they are supposedly co-conspirators, and Mr.
16 Walters is making tens of millions of dollars based on some
17 illegal tips, why is he going to steal and cheat Mr. Walters
18 for pittance of that?

19 Now, let me tell you some more of what you're going to
20 hear about Mr. Davis. As I told you, Mr. Davis, as you will
21 hear, was in dire straits. He was caught committing a variety
22 of crimes, lying about it, knew he faced a long jail sentence,
23 could be charged with insider trading. He had a problem. And
24 you will hear he told people he knew the only way out was to
25 point a finger at that man. And so he went in and he told a

H3F8WAL2

Opening - Mr. Berke

1 story to the prosecutors. And you're going to hear it wasn't
2 good enough for him to get his deal. But he was stuck.
3 Because now he admitted to all these other crimes he did, and
4 he couldn't turn back.

5 So what you're going to hear is for a number of months
6 Mr. Davis went in ten separate times, over ten separate times,
7 to try to persuade the prosecutors to give him his deal. He
8 had ten tryouts to try to persuade them to let him be on the
9 government's junior varsity team, the trophy of which would be
10 a get-out-of-jail-free card if he could persuade them he had a
11 story to tell.

12 What you are going to see what Mr. Davis did, and
13 which led to exactly what Mr. Ferrara said to you right here,
14 is Mr. Davis reverse engineered his testimony and his story
15 like a bad science experiment. What he did is he looked at
16 phone calls, and he would be asked by the prosecutors, well,
17 did you give inside information there? No, I didn't. Are you
18 sure? Well, maybe I did. Then he would look at an earnings
19 announcement, something the company announced later on, and
20 said, Oh, I told him that, everything they announced later,
21 that's what I told him. Tomorrow's news today. Then they
22 would have to say, well -- session two maybe -- sorry, you
23 wouldn't have known that information back then. OK, maybe
24 something else. And they did this again and again, where Davis
25 is telling a different story each time, and between each tryout

H3F8WAL2

Opening - Mr. Berke

1 he would meet with his lawyers and come again. And we are
2 going to unravel those lies. And you will see how many of
3 those lies we will show are false, every last one of them, and
4 we will show how they were constructed, and you will see it and
5 you will understand it.

6 Not only that, but what you're going to hear is that
7 even after he got his deal, he had over 15 more sessions to try
8 to polish the rough spots and the like.

9 Now, let me say, what Mr. Davis did is sort of like
10 what conspiracy theorists do, where they take real facts and
11 they connect them in ways that have nothing to do with reality
12 or what really happened. So Mr. Davis takes phone calls, or
13 stock trades, or announcements by the company and connects them
14 in ways that don't really connect.

15 And what you are going to see about the things he
16 tries to connect, for example, phone calls. You heard Mr.
17 Ferrara say there were times Mr. Walters spoke to Mr. Davis on
18 the same day he spoke to his broker. But what you're going to
19 see and hear is that Mr. Walters spoke to his broker nearly
20 every single day, and usually multiple times, and sometimes as
21 much as six times a day. And you will see during the critical
22 period he talked to his broker literally every single day.

23 You are going to hear he talked to Mr. Davis hundreds
24 and hundreds of times during this period, often multiple times
25 in a week. They talked about their business together. They

H3F8WAL2

Opening - Mr. Berke

1 talked about other business opportunities. They talked about
2 Wall Street generally. They talked about sports. You will
3 hear Mr. Davis was very interested in what Mr. Walters had to
4 say about who is going to win a game. They talked about
5 friends they had in common. They were both big golfers. They
6 talked about golf. And what you are going to hear again is
7 they talked about Dean Foods. They talked about things that
8 were entirely proper.

9 You heard that you're going to see Mr. Davis up there.
10 He is going to take an oath. He took an identical oath before
11 the Securities and Exchange Commission, where he said so
12 clearly he never gave illegal information to Mr. Walters. And
13 freely admitted they talked about Dean Foods, topics that were
14 entirely proper.

15 Let me show you what he said, and this is sworn
16 testimony by Tom Davis:

17 "I never provided Bill Walters any confidential
18 information whatsoever. I'm certain of that. And whatever we
19 discussed was typically available by analysts.

20 "Well, you know, he would ask me about what I'd call
21 sort of 50,000 foot business questions, like how China was
22 affecting the milk market in the United States. You know, has
23 organic milk products changed the dynamics of the fresh milk
24 business? I mean, things like that. He was a curious guy and
25 he would occasionally ask me questions like that.

H3F8WAL2

Opening - Mr. Berke

1 "Bill Walters never asked me any leading questions
2 about Dean Foods, so I felt like he respected the fact that I
3 was on the board and didn't want to put me in that kind of
4 position so he never did."

5 Not only did Mr. Davis swear to that in testimony
6 before the Securities and Exchange Commission, he told that to
7 the FBI when they showed up. He told that for well over a year
8 to his own lawyers, who repeated it to government agencies. He
9 told it to his friends. He told it to the world.

10 What you're going to hear about this is that companies
11 like Dean Foods regularly talk to investors. They talk to
12 investors all the time. They talk about topics they are
13 allowed to talk about. They have big meetings. They have
14 small meetings. They take phone calls from investors. All
15 sorts of information is fair game to talk about about Dean
16 Foods. And you are going to hear that Mr. Davis, as a board
17 member, was told what information the company was sharing with
18 investors and knew what was proper to share and not share. And
19 that Mr. Walters trusted and understood that Mr. Davis, the
20 navy veteran, Harvard Business School, trained investment
21 banker, philanthropist, community leader, experienced board
22 member, only shared that information which he knew was proper
23 and appropriate to share with Mr. Walters, just like the
24 company shared with all those big Wall Street investor firms
25 that also made big bets on Dean Foods. That's what he

H3F8WAL2

Opening - Mr. Berke

1 understood.

2 Now, what you are also going to see is something
3 interesting. I would submit to you, as you will see, that
4 someone who is telling a lie generally knows where there is a
5 problem with their story, because they know the truth. And
6 Mr. Davis knew there were problems. So he sort of came up with
7 a real doozy of a story to help him persuade that Mr. Walters
8 would have known that the information was bad. So he said,
9 during the critical White Wave period in 2012, the summer of
10 2012 -- that's where Mr. Walters made most of the money, which
11 we are going to talk about in a second -- that Mr. Walters,
12 during that critical summer of 2012 period, before that had
13 given him a prepaid phone so there would be no record of their
14 calls. That's how you know he knew something was wrong. And
15 he said use codes. That's how he knew.

16 I submit to you, members of the jury, at the end of
17 this trial you're going to call the "bat phone" argument from
18 Mr. Davis, that we just heard from the prosecution, you're
19 going to think of it as the "bat phony" argument, because we
20 are going to show you it's entirely made up.

21 You can roll your eyes on bat phony. I have three
22 teenagers daughters at home. I'm used to eye rolls. That's
23 OK. But you're going to hear that this prosecution has been
24 going like crazy trying to keep up with the lies about the "bat
25 phone" argument. It's a lie. He didn't have a bat phone. He

H3F8WAL2

Opening - Mr. Berke

1 had no codes. It's a lie like his whole story. But that was
2 like the man in Greece who had to tell more lies to prevent the
3 truth from coming out. That's what Tom Davis did.

4 I know you all take notes and you all make your own
5 independent decision about what notes to take, but one of the
6 things we are going to do is every time during Mr. Davis's
7 testimony that we believe he is telling a lie, another lie and
8 he is lying, we are going to make a notation. We are going to
9 show him later in the trial, through other evidence, that he
10 was lying, another notation. And at summation, we are going to
11 give you our tally. We can compare notes if you want. And I
12 suspect it's going to be very large tally.

13 What you are going to see is that the prosecution's
14 entire case, I submit to you, rises and falls over whether you
15 can believe Tom Davis, and believe him beyond a reasonable
16 doubt. And you're going to ask yourselves, I submit, in the
17 most important decisions in your lives -- because obviously
18 this is an important one -- would you rely on Tom Davis? Would
19 you rely on him beyond a reasonable doubt? And I submit to you
20 what you're going to find out is that the only thing Bill
21 Walters is guilty of is being friends with and trusting Tom
22 Davis.

23 Let me return for a moment to White Wave. You're
24 going to hear White Wave was the organic division of Dean
25 Foods. Silk Milk, it's sort of a big deal because it was sort

H3F8WAL2

Opening - Mr. Berke

1 of sexy and they have a big share of the market, and the big
2 question of Dean Foods is, when would White Wave be spun off,
3 because it was a popular brand, more and more people are
4 drinking organic and almond milk and the like. And analysts
5 and smart investors like Mr. Walters have been following this
6 for a long, long time. Mr. Walters had believed it would be
7 spun off, and you will see the evidence of that. He was
8 researching it for a long, long time.

9 But what happened is, in mid-2012, Dean Foods, known
10 to everyone, was contemplating this White Wave transaction,
11 spinning it off. There were a lot of tells in the market. The
12 company was talking about when they would do it. So there were
13 a lot of the tells, Mr. Walters' currency, and you will hear
14 all about that. So there were some people like Mr. Walters who
15 thought it was going to be a great thing and were heavily
16 invested, and you will hear about that. But it was a tough
17 time for the milk industry, raw milk prices had affected the
18 profitability of Dean Foods, so the stock was beaten so low.
19 And again, from Mr. Walters' perspective, he didn't think it
20 would go much lower because at some point everybody drinks
21 milk. So he perceived it to be the gambling equivalent, as you
22 will hear, of a free roll.

23 Let me tell you what a free roll is if you don't know.
24 If people are playing poker and there's only two players left,
25 and one player believes, based on the cards that are shown and

H3F8WAL2

Opening - Mr. Berke

1 known, that the worst they can do is tie the other player, so
2 the worst that they could get is they would split the pot, but
3 if they won they would get the whole pot, that is known in
4 poker gambling as a free roll. A limited downside, a huge
5 upside.

6 You will see Mr. Walters believed that was an
7 opportunity in mid-2012, and he told people about it, which you
8 will hear about it, and he invested a lot of money. And you
9 will hear that there were times he invested tens of millions,
10 even a hundred million in other companies. That's what he did,
11 having nothing to do with this case. And he made a big
12 investment, and he was right, like a lot of institutional
13 investors.

14 What you're going to hear is he told people, and among
15 the people he told was Phil Mickelson, his good friend, a
16 golfing buddy, someone who he regularly gave sports tips to,
17 because Phil was interested, and would also share stock tips at
18 times, as you will hear. Phil Mickelson, as you will hear, and
19 if you don't already know, is a Hall of Fame golfer, huge
20 endorser, very, very wealthy in his own right, and he made the
21 trade.

22 I will submit to you that the fact that the
23 prosecution referred to Phil Mickelson as some evidence of the
24 case is a tell of how weak they know the allegation of Tom
25 Davis is, the gaps they see in the evidence, the huge

H3F8WAL2

Opening - Mr. Berke

1 credibility gap, the canyon of Tom Davis's credibility.

2 I would submit to you even more than that. What
3 sophisticated investors know, as you will hear, is that when
4 there is a big event for a company, whether it's a merger,
5 acquisition or a spinoff, the Securities and Exchange
6 Commission looks to see who are the buyers leading up to that,
7 and they investigate, that's what they do. So if you're Bill
8 Walters, I would submit, and you believe that someone has given
9 you illegal inside information, the last thing you would do is
10 give it to Phil Mickelson, one of the most famous athletes in
11 the world, that is immediately going to track regulatory
12 scrutiny and lead back to Bill Walters.

13 More than that, you are going to hear that during this
14 time period, Bill Walters had all his cards turned over,
15 because you are going to hear that he made big investments that
16 often reflected a substantial percentage of the volume of the
17 stock traded. Again, as you will hear, sophisticated investors
18 know that FINRA, another regulatory agency that regulates the
19 stock market, they looked for spikes for when there is an
20 investor buying a lot of volume, and they investigate.

21 So I submit to you, as you see this evidence, what you
22 are going to see is that the allegation that Mr. Walters knew
23 he had illegal inside information, traded to bring all this
24 attention by being a substantial volume, got Phil Mickelson
25 involved, would be akin to a bank robber pulling on his mask,

H3F8WAL2

Opening - Mr. Berke

1 putting a note to the teller so it's sticking out of his
2 pocket, and walking up to a police officer and asking for
3 directions to the nearest bank. I submit to you, as you will
4 hear, it makes no sense.

5 Let me briefly address Darden. Darden, again, I would
6 submit is a tell. If the prosecution really believed they had
7 a case that they felt confident in about Dean Foods, they never
8 would have brought Darden. With Darden, Mr. Davis was not on
9 the board or otherwise involved, but he was approached by
10 people who were interested in making a significant investment
11 in Darden and had him personally sign a nondisclosure
12 agreement. So he was restricted from talking about the stock
13 or trading the stock because he signed this agreement that was
14 confidential and personal between him and the company. So when
15 he told people about it, when he told Bill Walters and others
16 that Darden is a great company, there's a real opportunity
17 there, he was violating the law. He is guilty of insider
18 trading because he had a nondisclosure agreement. But all the
19 other folks, who didn't have nondisclosure agreements and
20 didn't know it, are not at all, which you will hear about.

21 So you will see that that case, you will be scratching
22 your head a little bit when you see the evidence, and it has
23 nothing to do with why we are here, although I submit again
24 it's a tell.

25 Members of the jury, I would like to end where we

H3F8WAL2

Opening - Mr. Berke

1 began, in talking about what this prosecution's case is about.

2 Three things:

3 One, lies. The lies of Tom Davis, which you will hear
4 about and you will see how they were constructed, and you will
5 see them for what they are I submit;

6 Two, speculation. Speculation about what was said on
7 phone calls or why trades were made;

8 Three, innuendo. These trades were so big, tens of
9 millions of dollars, a hundred million, Mr. Walters must have
10 had illegal inside information.

11 I submit to you, lies, speculation, innuendo, that may
12 be an OK gossip page Twitter post, but that is a far cry from
13 proof beyond a reasonable doubt. And it's certainly not
14 evidence that you can rely on to find someone guilty of these
15 serious crimes.

16 I submit to you, when this case is over, you are going
17 to be persuaded of two things. And I will tell you, as Judge
18 Castel said, we obviously don't have to prove anything. We
19 have no burden. The burden is on the prosecution to prove this
20 case beyond a reasonable doubt. But I submit to you you will
21 persuaded of two things: Tom Davis is lying and Bill Walters
22 never believed he was doing anything wrong.

23 I am humbled by the responsibility of representing
24 Bill Walters. Bill Walters has his wife Susan, his family and
25 friends behind him, but he has us, his counsel, standing

H3F8WAL2

1 between him and you, the holders of his fate. And I believe
2 that if we do our jobs, and you see what was really going on at
3 this time, you see what is really going on with Tom Davis, what
4 is really going on back then, what Mr. Walters was believing
5 and doing, you will find him not guilty of these charges.

6 Judge Castel said a little while ago, as Mr. Walters
7 sits here, he is presumed innocent. When you look over at him,
8 you have to see him as presumed innocent. As the trial
9 progresses, sitting in a big courtroom, you look over, he is
10 presumed innocent. When the judge tells you the law at the end
11 of the case, Mr. Walters is still presumed innocent. And that
12 continues all the way through deliberations, unless you find
13 that the prosecution has proven this case beyond a reasonable
14 doubt. And I submit to you, members of the jury, that when you
15 see the evidence, and the lack of evidence, and what is really
16 going on here, you will reach the only just and fair verdict
17 and find Mr. Walters not guilty of all the charges against him.

18 Thank you.

19 THE COURT: Thank you, Mr. Berke.

20 Ladies and gentlemen, we will take a ten-minute break.
21 Remember, do not discuss the case among yourselves or with
22 anyone. Keep an open mind. See you in ten minutes.

23 (Jury exits courtroom)

24 (Recess)

25 MR. BERKE: I just want to mention one thing real

H3F8WAL2

1 quick. I think two of the jurors had their chairs switched. I
2 think Juror No. 3 is the back row, but we will talk to Flo with
3 your Honor's permission.

4 THE COURT: Flo is the one who is going to get this
5 straight. They should be in the chairs based on their juror
6 numbers and whether they were selected as regular or
7 alternates. So it's a good point to raise.

8 Madam deputy, you will work that out.

9 Thank you.

10 MR. BERKE: Thank you.

11 THE COURT: See you in ten minutes.

12 (Recess)

13 (Continued on next page)

H3F3WAL3

(In open court; jury not present)

THE COURT: You're going to put your witness in the box before or after each break so that we're ready to go.

MR. GOLDMAN: Certainly, your Honor. We're getting him right now.

THE COURT: I understand. Bring our jurors in, please. Sir, right up here.

(Jury present)

THE COURT: This is absolutely appropriate, but I just understand, my deputy advised me that one of the jurors in the back row knows one of the jurors in the second row. Is that correct?

A THE WITNESS: Yes.

THE COURT: How do you know him?

A THE WITNESS: He used to work where I work.

THE COURT: Okay. Excellent. Great. Terrific. Thank you very much.

A THE WITNESS: You're welcome.

(Witness sworn)

THE COURT: All right. You may inquire.

MR. GOLDMAN: Thank you, your Honor.

GREGG ENGLES,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

H3F3WAL3

Engles - direct

1 BY MR. GOLDMAN:

2 Q. Good afternoon, Mr. Engles.

3 A. Good afternoon.

4 Q. How old are you?

5 A. I'm 59 years old.

6 Q. Where do you live?

7 A. I live in the Denver, Colorado area.

8 Q. What is your educational background?

9 A. I have an undergraduate degree from Dartmouth College and a
10 law degree from the Yale Law School.

11 Q. What is your current occupation?

12 A. I am the chairman and the chief executive officer of the
13 WhiteWave Foods Company.

14 Q. What does the chairman mean?

15 A. I'm the chairman of the board of the directors of the
16 WhiteWave Foods Company.

17 Q. What is the board of directors?

18 A. The board of directors of a corporation is the body that
19 oversees the management and direction of a corporation.

20 Q. What kind of business is WhiteWave?

21 A. WhiteWave is a food manufacturing and distribution
22 business.

23 Q. What kinds of things does WhiteWave sell?

24 A. WhiteWave sells organic milk products, it sells dairy
25 alternative beverages like almond milk and soy milk, flavored

H3F3WAL3

Engles - direct

1 coffee creamers.

2 Q. Does WhiteWave have any brands it sells?

3 A. Yes. It sells in the United States under the Horizon
4 Organic brand, the Silk brand of dairy alternative beverages,
5 and the International Delight brand of coffee creamers.

6 Q. How long have you been chairman and chief executive officer
7 of WhiteWave?

8 A. I've been the chairman and CEO, chief executive officer, of
9 WhiteWave since October of 2012.

10 Q. Prior to that, what was your occupation?

11 A. I was the chairman and chief executive officer of a company
12 called the Dean Foods Company.

13 Q. What kind of company is the Dean Foods Company?

14 A. It is also a food manufacturing and distribution company.

15 Q. What is its primary business?

16 A. Its primary products are fluid milk products, so milk you
17 would buy in a gallon jug or half-gallon carton.

18 Q. Where is Dean Foods located?

19 A. Dean Foods is headquartered in Dallas, Texas.

20 Q. For how long were you chairman and chief executive officer
21 of Dean Foods?

22 A. I was chairman of and CEO of Dean Foods from approximately
23 1995 until 2012 in the case of chief executive officer, and
24 2013 as chairman.

25 Q. How did it come to be that you went from chairman and CEO

H3F3WAL3

Engles - direct

1 of Dean Foods to chairman and CEO of WhiteWave?

2 A. The Dean Foods Company owned the WhiteWave Foods Company.

3 At some point in time in October of 2012, we sold shares --

4 Dean Foods sold shares of WhiteWave to the public in an

5 offering, and at that point in time I became the CEO and

6 chairman of the WhiteWave Foods Company.

7 Q. When Dean Foods sold shares in WhiteWave, what happened to
8 those shares?

9 A. The shares were sold on the New York Stock Exchange and

10 they were bought by investors, either individuals or firms that
11 make investments in public companies.

12 Q. What kind of transaction is that called?

13 A. It's called a public offering.

14 Q. Ultimately, what happened to the WhiteWave Company?

15 A. The WhiteWave Company was ultimately completely separated
16 from Dean Foods, in a distribution of Dean Foods shares to its
17 shareholders.

18 Q. What is that called?

19 A. It's called a spinoff.

20 Q. We're going to get into some more detail about that a bit
21 later, but first I want to ask you a few questions about
22 WhiteWave and Dean Foods as public companies.

23 Are they traded on a stock exchange?

24 A. Yes. Both of those companies are traded on the New York
25 Stock Exchange.

H3F3WAL3

Engles - direct

1 Q. What does it mean for a company to be traded on the New
2 York Stock Exchange?

3 A. It means that investors, individuals or investment firms,
4 can buy or sell the shares of a company that's traded on the
5 exchange on any day the exchange is open.

6 Q. Are public companies governed by securities laws and
7 regulations?

8 A. Yes, they are.

9 Q. Broadly speaking, what requirements, if any, do public
10 companies have about releasing their financial performance
11 results?

12 A. The securities laws of the United States require that firms
13 that are publicly traded release financial statements every
14 three months, we call that on a quarterly basis. And that they
15 release full-year statements that are audited by our auditors
16 on an annual basis.

17 Q. Is it important for a company to maintain that information
18 confidentially from the public before those filings and
19 announcements are made?

20 A. Yes, it is.

21 Q. Is there a specific securities regulation that deals with
22 the public distribution or dissemination of information?

23 A. Well, there are, there are a number, yes, that require
24 filings, and that require that information that is released to
25 individual investors is released broadly to the market at the

H3F3WAL3

Engles - direct

1 same time.

2 Q. What is that particular regulation called?

3 A. That's called Regulation F.D. or Regulation Fair
4 Disclosure.

5 Q. Can you explain to the jury what that regulation requires?

6 A. It requires that if a company discusses or discloses to an
7 investor or a group of investors information that would affect
8 how they view the value of a stock or their desire to buy or
9 sell it, that that information be released to the market
10 broadly, so that all investors have the same information.

11 MR. BERKE: Your Honor, sorry to interrupt. Can I ask
12 your Honor to consider instructing the jury about the law, the
13 legal issues that pertain to this case?

14 THE COURT: Yes.

15 Ladies and gentlemen of the jury, I'm allowing this
16 general testimony at this time. But if any witness or lawyer
17 states a principle of law different than what I tell you in my
18 closing instructions in this case, it is my closing
19 instructions that you must follow. That said, I'll allow the
20 general overview evidence. Go ahead.

21 MR. GOLDMAN: Thank you, your Honor.

22 Q. What information falls under this Regulation F.D.?

23 A. Information that is thought to be material.

24 Q. What types of information about a public company are
25 considered to be material?

H3F3WAL3

Engles - direct

1 A. I think the generally accepted notion is that it is
2 information that an investor would consider important in their
3 decision to buy or sell a security.

4 Q. Can you be more specific about information that you dealt
5 with as chief executive officer that was material to the
6 company?

7 A. Well, there are a number of types of information. The
8 financial results that we would file on a quarterly and annual
9 basis under the securities laws are generally believed to be
10 material information. Information about important corporate
11 transactions, the purchase of a business, for example, of a
12 certain size would be thought to be material. The issuing of
13 security, the sale of securities like shares of common stock or
14 the issuance of debt by the company is often thought to be
15 material. Those sorts of important corporate transactions.

16 Q. You mentioned that you are currently the chief executive
17 officer of WhiteWave and were previously the chief executive
18 officer of Dean Foods. Can you explain to the jury what duties
19 and responsibilities you have as chief executive officer?

20 A. The chief executive officer of a company is generally
21 responsible for the oversight of the management of the
22 business, the actual management of the business.

23 So, the primary responsibilities of the chief
24 executive officer would be defining the company's strategy, and
25 then making sure that appropriate management and systems and

H3F3WAL3

Engles - direct

1 capabilities were in place in order to bring that strategy to
2 life.

3 Q. You discussed a little bit about what the board of
4 directors is. What types of responsibilities does the board of
5 directors have?

6 A. The board of directors' responsibilities really come down
7 to hiring the chief executive officer, and making sure that he
8 or she hires appropriate senior managers to guide the business.
9 And reviewing and assessing and ultimately approving the
10 strategy that the corporation undertakes.

11 Q. Must the board of directors approve other things in
12 addition to the strategy of the company?

13 A. Yes, there are many types of activities that the board has
14 to approve.

15 Q. Can you give the jury some examples.

16 A. Well, for example, a sale of the business would require the
17 board's approval. Or sale of a material meaningful part of its
18 assets. The declaration of dividends requires the board's
19 approval. The issuance or the sale of common stock securities
20 or the issuance of debt would require the board's approval.
21 Those sorts of things.

22 Q. Do members of the board of directors have duties to the
23 company?

24 A. Yes, they do.

25 Q. What are the principal duties that a director has?

H3F3WAL3

Engles - direct

1 A. Well, both of the companies that I have been involved with
2 are Delaware companies, and under Delaware law, the duties of
3 the board of directors to the company are really two fold. The
4 first is the duty of care, which means that directors are meant
5 to do all of the work necessary and to get advice necessary as
6 to make thoughtful decisions in their role as a member of the
7 board.

8 The second duty under Delaware law is the duty of
9 loyalty, which is really the duty to act in the best interest
10 of the corporation and its shareholders.

11 Q. Is there a duty of confidentiality that a board member has
12 to the company?

13 A. I think that duty generally falls under the duty of
14 loyalty, and the duty to act in the corporation's best
15 interests, and not in the self-interest of a director.

16 Q. As chief executive officer, did you update the board of
17 directors on all material information about the company?

18 A. Yes.

19 Q. Generally, what types of things must be kept confidential
20 by the board of directors?

21 A. Well, generally things that are material, and that are not
22 otherwise known in the marketplace.

23 Q. Can board members discuss confidential company matters with
24 each other?

25 A. Yes.

H3F3WAL3

Engles - direct

1 Q. Can board members discuss confidential company matters with
2 the CEO?

3 A. Yes.

4 Q. Can board members discuss confidential matters with friends
5 or members of the public?

6 A. No.

7 Q. In your experience, are investment professionals aware of
8 the confidentiality requirements of the members of the board of
9 directors of public companies?

10 MR. BERKE: I'm going to object, your Honor.

11 THE COURT: Basis?

12 MR. BERKE: Foundation, your Honor.

13 THE COURT: Lay a foundation.

14 Q. You stated you were the chief executive officer, is that
15 right?

16 A. Correct.

17 Q. As chief executive officer and chairman of the board, did
18 you interact with the investment public quite frequently?

19 A. Yes, it was one of my principal duties.

20 Q. From that experience as chief executive officer interacting
21 with investment professionals, are you aware that investment
22 professionals are aware of the confidentiality requirements of
23 members of the board of directors?

24 A. I would say generally, yes.

25 Q. Why does it matter to the company that significant

H3F3WAL3

Engles - direct

1 information shared with the board of directors remains
2 confidential?

3 A. Well, there are many reasons. Depending upon the nature of
4 the information, it could be competitively sensitive. For
5 example, if a corporation were competing to make an acquisition
6 that other parties might be interested in. For that
7 information to become public would be harmful to the interests
8 of the corporation.

9 There are important matters that corporations deal
10 with that are internally sensitive. They have important
11 organizational implications within the company, and so the
12 management of the release of that information is often
13 carefully considered.

14 And then, of course, material information affects the
15 way that companies are valued by investors. What the price of
16 their stock is. And it's certainly in the corporation's
17 interest for that flow of information to be orderly and managed
18 by the company.

19 Q. Generally speaking, how is information about the company
20 made public?

21 A. There are a number of ways. There are regular filings
22 under the securities laws, so, three months, every three months
23 we file our quarterly reports; at the end of every year we file
24 our fiscal reports. Those are typically accompanied by and
25 other important matters are disclosed by a press release that

H3F3WAL3

Engles - direct

1 is issued by the company.

2 And then the company also participates in conferences
3 from time to time organized to bring companies and investors
4 together usually in a particular industry, in our case the
5 consumer goods or food manufacturing industries. There are a
6 number of conferences at which we would present our company to
7 the investment community, and those would be public.

8 Q. Until the company makes information public in the manners
9 you just described, can a member of the board disclose that
10 information to anyone outside the company?

11 A. They should not, no.

12 Q. Did Dean Foods board members receive training on
13 confidentiality requirements?

14 A. Yes.

15 Q. Broadly speaking, what did that training include?

16 A. Well, there were a number of formats for training
17 directors. Dean Foods had a code of ethics in place that dealt
18 with the maintenance of confidential information. Board
19 members would have to read that code of ethics and take
20 training with respect to that code of ethics and certify that
21 they had read it and received periodic training.

22 And then, usually in conjunction with a major
23 transaction, a major securities issuance or a major corporate
24 transaction like the consideration of the sale of a business,
25 we would have our outside counsel come in and remind the board

H3F3WAL3

Engles - direct

1 specifically of their duties.

2 Q. Focusing on Dean Foods for a minute, when you were chairman
3 and CEO, how many board members were there?

4 A. I don't remember exactly. But I believe it ranged from
5 nine on the low side to maybe 13 on the high side.

6 Q. How often did the board of directors of Dean Foods meet?

7 A. Well, the board would have regularly scheduled meetings
8 each quarter, usually shortly following the release of our
9 financial statements for the quarter and the year end. And
10 then we would meet from time to time, either in person or by
11 telephone, if there were matters that needed to be addressed
12 between the regularly scheduled meetings.

13 Q. Were there also subcommittees of the board of directors?

14 A. Yes.

15 Q. What committees were there?

16 A. At Dean Foods we had I believe four committees. We had an
17 executive committee of the board, an audit committee of the
18 board, a compensation committee of the board, and a nominating
19 and governance committee of the board.

20 Q. Would these committees also meet separate from the rest of
21 the board?

22 A. Yes, they would.

23 Q. Was one board member of Dean Foods an individual named Tom
24 Davis?

25 A. Yes.

H3F3WAL3

Engles - direct

1 MR. GOLDMAN: If I could ask Ms. Pyun to show the
2 witness Government Exhibit 4.

3 Q. Do you recognize that individual?

4 A. Yes. That's Tom Davis.

5 MR. GOLDMAN: Government offers Exhibit 4.

6 MR. BERKE: No objection, your Honor.

7 THE COURT: Received.

8 (Government's Exhibit 4 received in evidence)

9 MR. GOLDMAN: If we may publish for the jury, your
10 Honor?

11 THE COURT: You may.

12 Q. When did Tom Davis join the board of Dean Foods?

13 A. It was in the early part of the decade, from 2000 to 2010.

14 Q. What was Tom Davis' background?

15 THE COURT: Do you have this up on your monitor,
16 ladies and gentlemen?

17 A THE WITNESS: Yes.

18 THE COURT: Okay.

19 Q. What was Tom Davis' background?

20 A. Tom was an investment banker in Dallas that worked for a
21 couple of investment banking firms. I think most recently, a
22 firm called DLJ, prior to that company being sold in the early
23 2000s.

24 MR. GOLDMAN: We can take that down, thank you.

25 Q. Are there restrictions on buying and selling stock for

H3F3WAL3

Engles - direct

1 board members at Dean Foods?

2 A. Yes, there are.

3 Q. What were they?

4 A. Because of the confidential nature of our earnings, in any
5 given quarter prior to their release, Dean Foods, like most
6 companies, would have what they call a window which started
7 about 45 days before the release of those earnings, during
8 which the board of directors and all the senior managers were
9 prohibited from trading in the securities of Dean Foods.

10 Q. Were there other times, in addition to that 45-day period,
11 when directors were prohibited from trading?

12 A. Yes. Anybody in possession of information that was
13 material and not public would be specifically prohibited from
14 trading until that information became public.

15 Q. How was that fact relayed to the members of the board?

16 A. Usually by virtue of a communication from somebody on the
17 general counsel staff, our lawyers' staff.

18 Q. Let's return to WhiteWave for a moment. You mentioned that
19 you became chairman and CEO of WhiteWave in October of 2012
20 after an initial public offering.

21 Can you explain for the jury what an initial public
22 offering is?

23 A. Yes. An initial public offering is the first time that a
24 company's stock, common stock, is offered for sale on a public
25 exchange like the New York Stock Exchange.

H3F3WAL3

Engles - direct

1 Q. Then I believe you testified that WhiteWave became its own
2 company after Dean Foods did what's called a spinoff.

3 Approximately when was that spinoff?

4 A. The spinoff from Dean to WhiteWave of its shares was I
5 believe in May of 2013.

6 Q. Just for ease of reference, we'll call the entire
7 transaction a spinoff going forward. But when did Dean Foods
8 announce that it intended to spinoff WhiteWave?

9 A. It announced its intention to spinoff WhiteWave in early
10 August of 2012.

11 Q. Do you recall what happened to Dean Foods' stock the day
12 after the announcement?

13 A. Yes. It rose about 40 percent.

14 Q. Prior to the announcement of the WhiteWave spinoff in early
15 August, did you have an understanding of whether the public
16 knew that Dean Foods would be spinning off WhiteWave?

17 MR. BERKE: Objection, your Honor.

18 THE COURT: No, I'll allow it.

19 A. Could you ask the question again, please?

20 Q. Prior to the announcement of the spinoff of WhiteWave in
21 early August, did you have an understanding of whether the
22 public knew that Dean Foods would be spinning off WhiteWave at
23 that time?

24 A. I believed they did not know.

25 Q. Prior to that announcement, did members of the board of

H3F3WAL3

Engles - direct

1 directors know that Dean Foods would be spinning off WhiteWave
2 on that date?

3 A. Yes.

4 Q. In fact, did the board of directors have to approve the
5 spinoff before it was announced?

6 A. Yes, they did.

7 Q. Was the spinoff a big deal at Dean Foods?

8 A. Yes. It was one of the most important things that we had
9 done or considered at Dean Foods.

10 Q. When the announcement was made in early August of the
11 spinoff and the IPO of WhiteWave, was the IPO certain to occur?

12 A. No.

13 Q. Was it possible that it would not occur?

14 A. Yes.

15 Q. At the time of the announcement in August, did you have a
16 date for the IPO?

17 A. No, we did not.

18 Q. Did you know what the price of the WhiteWave shares would
19 be at the IPO?

20 A. No, we did not.

21 Q. Was that information important to the Dean Foods Company?

22 A. Yes.

23 Q. Why was that?

24 A. Well, the money that we got from selling shares to the
25 public would be used -- it would be Dean Foods money. Dean

H3F3WAL3

Engles - direct

1 Foods shares that were sold to the public. And that money was
2 used to reduce Dean's indebtedness, and that was important to
3 even completing the spinoff.

4 Q. Do you recall approximately when WhiteWave announced a
5 price range and the number of shares that it would be selling
6 as part of the IPO?

7 A. Not exactly, but it was -- it was shortly before the IPO,
8 so it would have been in mid October sometime.

9 Q. After you became CEO of WhiteWave following the IPO, who
10 became the CEO of Dean Foods?

11 A. Gregg Tanner.

12 MR. GOLDMAN: We can show the witness Government
13 Exhibit 22.

14 Q. Do you recognize that individual?

15 A. Yes, that's Mr. Tanner.

16 MR. GOLDMAN: The government would offer Exhibit 22.

17 MR. BERKE: No objection, your Honor.

18 THE COURT: Received.

19 (Government's Exhibit 22 received in evidence)

20 MR. GOLDMAN: If we may publish it to the jury.

21 Q. Now, did Dean Foods remain a separate publicly traded
22 company under the guidance of Gregg Tanner?

23 A. Yes, it did.

24 Q. Did Dean Foods retain any ownership in WhiteWave stock
25 following the IPO?

H3F3WAL3

Engles - direct

1 A. Yes. It owned 87 percent of WhiteWave following the IPO.

2 Q. Can you explain to the jury what happened in May of 2013
3 with regard to the WhiteWave stock that Dean Foods owned?

4 A. Yes. A -- most of the stock that Dean owned in WhiteWave,
5 all but 20 percent, Dean gave as a dividend to its
6 shareholders. So they got WhiteWave stock, shares of stock in
7 proportion to the amount of Dean stock that they owned, and
8 they became direct owners of WhiteWave foods.

9 Q. Did Dean Foods retain any ownership of WhiteWave stock at
10 that time?

11 A. Dean retained about 20 percent as I recall.

12 MR. GOLDMAN: We can take that down.

13 Q. Did there come a time --

14 THE COURT: Let me see whether I understand this.
15 Before the transaction, if you owned stock in Dean Foods, you
16 owned stock in a Dean Foods that owned WhiteWave.

17 THE WITNESS: Correct.

18 THE COURT: And so, if you are a shareholder of Dean
19 Foods, you're getting separate shares in WhiteWave, but it
20 reflects the fact that before you got those shares, you were an
21 owner of WhiteWave through Dean Foods. Is that accurate?

22 THE WITNESS: Yes, that's exactly right.

23 THE COURT: Thank you.

24 Q. Just following on the judge's questions, what was the
25 rationale to do a transaction like that?

H3F3WAL3

Engles - direct

1 A. The rationale was that Dean had two business, it had this
2 WhiteWave business that was branded and rapidly growing, and it
3 had a milk business that was more of a commodity business and
4 slow growing. But the commodity business was much larger than
5 this WhiteWave business. We believed that WhiteWave's value
6 was not adequately reflected in Dean Foods' price because of
7 its relatively small size. And that by separating Dean into
8 two companies, the value owned by our shareholders in the
9 marketplace would increase.

10 Q. And the total value would include the shareholders'
11 ownership in Dean Foods stock and the shareholders ownership in
12 WhiteWave stock, is that right?

13 A. Yes, because you now, following the spinoff, had two
14 different stocks, WhiteWave and Dean.

15 Q. Did there come a time when Dean Foods sold its remaining
16 20 percent of WhiteWave stock?

17 A. Yes, it was the summer of 2013. I think July.

18 Q. Mr. Engles, when did you become CEO of the company that is
19 now Dean Foods?

20 A. I became CEO of the company in during 1995, I don't
21 remember exactly when.

22 Q. I think you briefly touched on this earlier, but what was
23 Dean Foods' primary business?

24 A. It was a milk company.

25 Q. What is the, generally speaking, what is that business

H3F3WAL3

Engles - direct

1 called?

2 A. Well, we refer to it as the fluid milk business.

3 Q. Can you give the jury a little primer on how this business
4 operated?

5 A. Pretty simple business. Farmers or a farm cooperative
6 would deliver milk to one of our factories, we'd receive that
7 milk, pasteurize it, homogenize it, and put it into a gallon
8 jug or half-gallon carton or take some of the fat off and make
9 half and half.

10 Q. What would you do --

11 A. We would then deliver that product directly to stores with
12 our own trucks.

13 Q. How long did that entire process take, from the time the
14 cows were milked until the milk was put on the shelf?

15 A. It's usually on the shelf within two days.

16 Q. How did you measure the performance of Dean Foods' fluid
17 milk business?

18 A. We really looked at it on a pennies of profit per gallon.

19 Q. Can you briefly just explain what profit is.

20 A. Profit is how much money you have left after you subtract
21 your costs from the selling price of the product.

22 Q. Broadly speaking, what were the most important costs of
23 Dean Foods' milk business?

24 A. Well, without a doubt, it was the cost of milk was the
25 single most important cost. About 70 percent of total costs in

H3F3WAL3

Engles - direct

1 the milk business. And then, because we ran 6,000 trucks
2 around the country every day, the cost of fuel was very
3 important in our business. And the other most important costs
4 was the cost of the plastic pellets that we bought to make our
5 jugs that we put the milk into.

6 Q. Can you explain generally how the cost of milk affected the
7 bottom line of Dean Foods?

8 A. Yes. When the cost of milk was going up, our profits were
9 usually going down. Because we would experience the rise and
10 the cost of milk faster than we could pass it on to our
11 customers. And then, of course, the opposite was true. When
12 the price of milk was going down, our profits would go up
13 because we experienced the decline in the cost of milk from
14 farmers faster than we could pass it along to our customers.

15 Q. Did this fluid milk business have a lot of growth
16 opportunities?

17 A. No.

18 Q. Why not?

19 A. I think milk's been in everybody's refrigerator since they
20 were born, and they know how to use it, and they use it in a
21 very consistent way, and they have a glass at night, they eat
22 it on their cereal in the morning, and those habits don't
23 change very much.

24 Q. I'm going to direct your attention to the year 2004. What
25 percentage of the milk supply in the United States did Dean

H3F3WAL3

Engles - direct

1 Foods provide?

2 A. We manufactured and distributed somewhere between 35 and
3 40 percent of all the milk sold in the United States.

4 Q. Was that the most of any milk supplier in the country?

5 A. Yes.

6 Q. At that point in 2004, were there limitations on Dean
7 Foods' ability to get any bigger?

8 A. Yes, there were.

9 Q. What were those limitations?

10 A. Well, primarily, the antitrust regulators viewed that Dean
11 had a big enough share of the market, and to have any more
12 would be uncompetitive.

13 Q. You testified earlier that the brands that WhiteWave sold
14 included Silk, Horizon Organic, and International Delight. Did
15 there come a time when you consolidated all of those brands
16 under the WhiteWave name?

17 A. Yes.

18 Q. When was that?

19 A. It was in the summer of 2004.

20 Q. Can you briefly just explain to the jury what the Silk
21 brand is.

22 A. Silk is the country's leading brand of beverages that are
23 sold under the milk name but aren't dairy milk, so soy milk,
24 almond milk, coconut milk, those sorts of things.

25 Q. What does the Horizon brand sell?

H3F3WAL3

Engles - direct

1 A. Horizon is the largest brand of organic milk in the United
2 States.

3 Q. International Delight, what does that sell?

4 A. International Delight is a brand of flavored coffee
5 creamers. If you want a hazelnut creamer in your coffee,
6 International Delight makes that product.

7 Q. Generally, what were these businesses referred to as in
8 your industry?

9 A. Well, in our company we called them our branded businesses.

10 Q. How did these branded businesses compare in their
11 opportunities to the fluid milk business?

12 A. Well, as opposed to milk, dairy milk, these plant-based
13 products and organic milk, flavored coffee creamers, were
14 relatively new products in the marketplace. So, we had a great
15 opportunity to educate consumers about their benefits and
16 convince them to use more and more of these products over time.

17 Q. In 2004, why did you combine all these brands into one
18 subsidiary?

19 A. Well, so we could run the brands more efficiently. So,
20 prior to combining them, we had two of these branded businesses
21 in Colorado, one of them was in Texas, they each had their own
22 president, they each had their own sales organizations, they
23 each had their own accounting organizations, and it was
24 inefficient. So, in putting these three branded businesses
25 together, we were able to hire one staff, we were able to

H3F3WAL3

Engles - direct

1 upgrade that staff because the combined business was a bigger
2 business and make it more professional. And we felt that
3 combining them gave us the tools that we needed to grow the
4 businesses more quickly.

5 Q. At the time that you did the combination, what, if any,
6 vision did you have for this subsidiary called WhiteWave?

7 A. Well, really, two fold. First of all, we believed that,
8 based on their history, that this combined group of brands
9 would become a growth engine for Dean Foods, because their
10 products were growing much more quickly than the liquid milk
11 business, and we could foresee a day where ultimately their
12 growth and profitability would be sufficiently large that we
13 could separate them from the milk business and do what we
14 ultimately did in 2012.

15 Q. At that point, how long did you imagine it would take to
16 build the company sufficiently to separate it from Dean Foods?

17 A. Several years.

18 Q. Did you discuss that with the public at that time?

19 A. No.

20 Q. I want to direct your attention to May of 2006. Did there
21 come a time when another public company approached you to
22 discuss purchasing Dean Foods?

23 A. Yes.

24 Q. Which company?

25 A. The Coca-Cola Company.

H3F3WAL3

Engles - direct

1 Q. Approximately when did Coca-Cola approach you?

2 A. Sometime in mid to late May 2006.

3 Q. What was your initial response?

4 A. Well, I questioned whether it made any sense, given the
5 businesses were very different from one another.

6 Q. Did there come a time when you expressed interest in
7 pursuing discussions with Coca-Cola after that initial
8 interaction?

9 A. Oh, yes. I mean, it all happened really in one meeting.
10 After I said it doesn't make any sense to me, the chief
11 executive officer of Coca-Cola said, well, we've done a lot of
12 work on it, and we've thought really hard about it, and
13 something that we think makes sense for us, and we'd like to
14 pursue it. At which point in time I said let me talk to my
15 board and I'll get back to you.

16 Q. Did there come a time when Coca-Cola indicated a price that
17 they would be willing to pay Dean Foods?

18 A. Yes.

19 Q. What was your reaction to their initial price offering?

20 A. That it was too low.

21 Q. What was Coca-Cola's response?

22 A. That they needed to think about whether or not they could
23 get to a higher price, and probably had more work to do if they
24 were going to get to a higher price.

25 Q. Did there come a time when they increased their indication

H3F3WAL3

Engles - direct

1 of the price they would be willing to pay?

2 A. Yes.

3 Q. Do you recall what that price was that they eventually
4 settled on?

5 A. Our discussions ultimately centered around \$55 a share.

6 Q. Around where was Dean Foods' stock trading?

7 A. I have no idea.

8 Q. Was it much lower than \$55?

9 A. It was well below \$55.

10 Q. Was that a price that you were happy about?

11 A. Yes.

12 Q. Did there come a time when you reported about these
13 negotiations to the board of directors?

14 A. Yes.

15 Q. Why did you present these negotiations to the board?

16 A. Well, there's really nothing more important in a
17 corporation's existence than selling the business. So, this
18 was clearly one of those things that the board would have to
19 approve and needed to think about all along the way through the
20 process.

21 MR. GOLDMAN: If we can pull up Government Exhibit 402
22 for the witness, please.

23 Q. Do you recognize this document, Mr. Engles?

24 A. Yes, I do.

25 Q. What is this?

H3F3WAL3

Engles - direct

1 A. These are the minutes of a telephonic meeting of the board
2 of directors of the Dean Foods Company held on July 19, 2006.

3 Q. What are minutes of the board of directors?

4 A. Minutes are a high-level reader's digest version of what
5 took place at a meeting.

6 MR. GOLDMAN: The government offers Exhibit 402.

7 THE COURT: Any objection?

8 MR. BERKE: No objection.

9 THE COURT: Received.

10 (Government's Exhibit 402 received in evidence)

11 MR. GOLDMAN: If we can publish this for the jury.

12 Q. You said this is a special telephonic meeting. What is
13 that?

14 A. This was not a regularly scheduled quarterly meeting, so
15 this was a meeting that would have happened between meetings.
16 Between quarterly meetings.

17 Q. How were these in-between meetings, so to speak, how were
18 they organized?

19 A. Usually, my assistant or my general counsel's assistant
20 would send an e-mail to members of the board asking for times
21 that they would be able to join a meeting at some date in the
22 future. And we try to pick a date that worked for as many
23 people's schedule as possible.

24 Q. Prior to testifying here today, did you review the minutes
25 of this meeting?

H3F3WAL3

Engles - direct

1 A. Yes.

2 Q. Did you review minutes of most of Dean Foods' board
3 meetings from 2006 through -- through the time that you were
4 CEO?

5 A. Yes.

6 Q. Was Tom Davis present at this meeting?

7 A. The minutes indicate he was, yes.

8 Q. What did you call this meeting to discuss?

9 A. I believe I called this meeting to discuss the status of
10 the discussions with the Coca-Cola Company about acquiring Dean
11 Foods.

12 MR. GOLDMAN: If we could zoom out, Ms. Pyun, and pull
13 up the bottom half.

14 Q. There is a reference there to Copper transaction. What is
15 Copper?

16 A. Copper is the Coca-Cola Company, and it is an investment
17 banking code name for sensitive information or sensitive
18 project.

19 Q. Why do they use code names?

20 A. Because this is typically confidential information, so, it
21 would make it harder for somebody to figure out what this was
22 if they just got ahold of a document.

23 Q. Did the investment bankers typically present slide decks or
24 presentations at meetings such as these?

25 A. Yes.

H3F3WAL3

Engles - direct

1 Q. Would those be potentially circulated around the investment
2 bank as well?

3 A. I assume so, yes.

4 Q. What was the board's reaction to the possibility of selling
5 the company to Coca-Cola at the July 19 board meeting?

6 A. I think they were generally intrigued by the idea, and you
7 know, were making an assessment of whether or not this was a
8 good thing for the shareholder, but I think they were positive
9 with respect to the idea.

10 Q. Moving on as the summer went on -- you can take that down
11 now -- what happened after this special board meeting with
12 respect to negotiations with the Coca-Cola?

13 A. They proceeded through the summer.

14 Q. Did there come a time when negotiations intensified?

15 A. Yes, they always intensified towards the end. So, in the
16 fall, early to mid fall, yes.

17 Q. Did you continue to update the board on the progress of
18 negotiations?

19 A. Yes.

20 MR. GOLDMAN: If we could pull up Government Exhibit
21 403 for Mr. Engles, please.

22 Q. Do you recognize this document?

23 A. Yes, I do.

24 Q. What is this?

25 A. These are the minutes of a regularly scheduled quarterly

H3F3WAL3

Engles - direct

1 meeting of the board of directors of Dean Foods held on
2 August 25, 2006.

3 MR. GOLDMAN: Government offers Exhibit 403.

4 MR. BERKE: No objection, your Honor.

5 THE COURT: Received.

6 (Government's Exhibit 403 received in evidence)

7 Q. Do you recall whether you updated the board on the progress
8 of the Coca-Cola negotiations at this board meeting?

9 A. Yes, I believe I did.

10 MR. GOLDMAN: If we can pull up the bottom of page
11 three of this exhibit, Ms. Pyun.

12 Q. Is this again referencing the Copper transaction, that's
13 Coca-Cola?

14 A. Yes.

15 Q. Could you read the very last paragraph or the first
16 sentence of the last paragraph.

17 A. Yes. "Mr. Robinson reviewed the fiduciary duties of
18 members of the board under Delaware law in connection with a
19 potential change in control of the company."

20 Q. Who was Mr. Robinson?

21 A. He was one of our outside lawyers.

22 Q. What fiduciary duties did Mr. Robinson discuss with the
23 board at that time?

24 A. He reviewed the fiduciary duties that I described earlier.

25 Q. Was it typical for lawyers to review the fiduciary duties

H3F3WAL3

Engles - direct

1 at board meetings such as this?

2 A. Well, when a very major transaction was taking place, yes.

3 MR. GOLDMAN: You can take that down now.

4 Q. Now, after this meeting, were negotiations with Coca-Cola
5 still ongoing?

6 A. Yes, they were.

7 Q. Did there come a time when you called a special meeting
8 with the board to discuss the progress with Coca-Cola again?

9 A. Yes.

10 MR. GOLDMAN: If we can pull up Government Exhibit 405
11 for Mr. Engles, please.

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. What is this?

15 A. These are the minutes of a special telephonic meeting of
16 the board of directors of the Dean Foods Company held on
17 September 21, 2006.

18 Q. Did you update --

19 MR. GOLDMAN: The government offers Exhibit 405.

20 MR. BERKE: No objection, your Honor.

21 THE COURT: Received.

22 (Government's Exhibit 405 received in evidence)

23 MR. GOLDMAN: If we can publish this for the jury. If
24 we can go to page three, please.

25 Q. At this point, September 21, 2006, what did you think the

H3F3WAL3

Engles - direct

1 chances were that this transaction with Coca-Cola would occur?

2 A. I thought they were quite high.

3 Q. What happened after this meeting?

4 A. I received a call from the chief financial officer who had
5 been my principal contact in negotiating the Coke transaction
6 in I believe early October of 2006, and he asked if he and the
7 Coca-Cola CEO could come to Dallas to visit me.

8 Q. Did you meet with them?

9 A. I did.

10 Q. What happened at that meeting?

11 A. At that meeting they informed me that another strategic
12 opportunity that they viewed as more important to Coca-Cola had
13 come up, and they would be discontinuing their discussions with
14 Dean Foods and would not make us a formal offer to buy the
15 company.

16 Q. Was that a surprise to you?

17 A. Very much so.

18 Q. Did you relay this information to the board?

19 A. Yes, I did.

20 Q. Approximately when in time after your lunch meeting with
21 the Coca-Cola management?

22 A. I don't remember exactly, but as soon as we could organize,
23 as soon as we could organize a call and get everybody on the
24 phone.

25 MR. GOLDMAN: If we can pull up Government Exhibit

H3F3WAL3

Engles - direct

1 406, Ms. Pyun, just for the witness.

2 Q. Do you recognize this is document?

3 A. Yes, I do.

4 Q. What is this?

5 A. These are the minutes of a special telephonic meeting of
6 the board of directors of Dean Foods Company held on October 6,
7 2006.

8 MR. GOLDMAN: Government offers Government Exhibit
9 406.

10 MR. BERKE: No objection, your Honor.

11 THE COURT: Received.

12 (Government's Exhibit 406 received in evidence)

13 Q. Did you inform the board of Coca-Cola's decision to
14 withdraw from the negotiations at this meeting?

15 A. I did.

16 Q. Now, after this meeting, was there any further discussion
17 with Coca-Cola?

18 A. No substantive discussion, no.

19 Q. At any point during your negotiations with Coca-Cola from
20 May 2006 through this meeting in October 6, 2006, were any of
21 the discussions that you had with Coca-Cola about selling your
22 company to Coca-Cola made public?

23 A. Not to my knowledge.

24 Q. Were these discussions considered to be confidential
25 negotiations?

H3F3WAL3

Engles - direct

1 A. Yes.

2 Q. Were your discussions with the board of directors about the
3 Coca-Cola transaction confidential?

4 A. Yes.

5 Q. If Coca-Cola had purchased Dean Foods, would that have been
6 an important event for the company?

7 A. Absolutely.

8 Q. Can you think of anything more significant than selling
9 your entire company?

10 A. No.

11 Q. Did you ever inform the public of the merger discussions
12 with Coca-Cola?

13 A. Not to my recollection.

14 Q. To your knowledge, were those discussions ever made public
15 before you just stated them in court today?

16 A. Not to my recollection.

17 MR. GOLDMAN: We can take that down, Ms. Pyun.

18 Q. Now, after these negotiations fell through, where did that
19 leave the company?

20 A. We had a business that we were proud of and that was a fine
21 business before Coca-Cola called, and we had a business that we
22 were proud of after Coca-Cola decided not to pursue the
23 transaction.

24 Q. How was the company's performance in 2006?

25 A. I think it was quite good.

H3F3WAL3

Engles - direct

1 Q. If I can direct your attention to early 2007. Did there
2 come a time when the company made a significant financial
3 transaction?

4 A. Yes.

5 Q. What was that?

6 A. The company paid to its shareholders a dividend, special
7 dividend of \$15 per share in the spring of 2007.

8 Q. What is a special dividend?

9 A. It's a dividend that's only paid one time. Many companies
10 pay dividends every quarter, Dean Foods did not do that, but we
11 paid this very large dividend one time.

12 Q. How big was the dividend?

13 A. It was \$15 a share.

14 Q. Was that considered to be quite a large special dividend?

15 A. Yes. It was a significant percentage of our total share
16 value.

17 Q. How did you pay the shareholders that special dividend?

18 A. We borrowed \$2 billion from our banks and from the bond
19 market.

20 Q. Was this an important transaction for the company?

21 A. Yes, it was.

22 Q. Did you discuss this transaction with the board?

23 A. Yes, I did.

24 MR. GOLDMAN: If we can pull up Government Exhibit
25 408, please.

H3F3WAL3

Engles - direct

1 Q. Do you recognize this exhibit?

2 A. Yes, I do.

3 Q. What is this?

4 A. These are the minutes of a special telephonic meeting of
5 the board of directors of the Dean Foods Company on
6 February 12, 2007.

7 MR. GOLDMAN: Government offers Exhibit 408.

8 MR. BERKE: No objection, your Honor.

9 THE COURT: Received.

10 (Government's Exhibit 408 received in evidence)

11 MR. GOLDMAN: We can publish this.

12 Q. Was Tom Davis present at this meeting?

13 THE COURT: We're going to pause right there, ladies
14 and gentlemen. We'll keep you hanging in suspense overnight.
15 And listen, I've learned from the people in the film and
16 television industry how to keep the interest levels high.

17 So, what am I going to tell you? I'm going to tell
18 you it's been a long day for you, for some of you. Some of you
19 arrived here early this morning, some of you arrived at 2
20 o'clock. We just went through the snowstorm.

21 But, you're going to go home tonight, and you do not
22 discuss the case with anyone and you do not read news reports,
23 you do not do internet searches, you can talk all you want
24 about this case when it's over. You can tell anybody you want.
25 But not now.

H3F3WAL3

Engles - direct

1 And in any event, I know you also have all sorts of
2 personal responsibilities, dry cleaning and laundry and picking
3 up a quart of milk and things like that, so I know your day is
4 not over as you leave here. Some of you have a long way to
5 travel. But I hope you have a great evening, and you'll go in
6 downstairs at like a quarter to 10 so that you can be in the
7 jury room for 10 o'clock. And remember, your fellow jurors are
8 depending on each and every one of you to make it on time.
9 Because we have to wait until you're all here. So, have a
10 pleasant evening and see you tomorrow.

11 A JUROR: Can you just clarify, one of the jurors said
12 we don't come on Friday?

13 THE COURT: This Friday, we will not sit on this trial
14 this Friday.

15 A JUROR: So we go to our regular jobs on Friday?

16 THE COURT: Regular jobs, etc.

17 A JUROR: Anything you can tell us for next week or
18 no?

19 THE COURT: Can't tell you yet, but I will give you
20 updates. I'll give you regular updates.

21 (Jury excused)

22 (Continued on next page)

H3F3WAL3

1 THE COURT: See you tomorrow morning.

2 MR. GOLDMAN: We have one issue after the witness is
3 excused.

4 THE COURT: All right, sir, Mr. Engles, you are
5 excused.

6 THE WITNESS: Thank you.

7 THE COURT: See you tomorrow morning.

8 MR. GOLDMAN: Your Honor, we started getting some of
9 the potential defense exhibits that they are going to intend to
10 introduce through Mr. Engles, they started trickling in and we
11 anticipate having a number --

12 THE COURT: Mr. Engles, I'd ask you to step out of the
13 courtroom, if you don't mind.

14 THE WITNESS: They just stopped me because the jurors
15 aren't gone yet.

16 THE COURT: That's a little tricky then.

17 MR. GOLDMAN: Is it possible to go into the witness
18 room?

19 (Witness not present)

20 MR. GOLDMAN: We expect to have a number of objections
21 or potential objections, depending on what they do, and this is
22 the first time this has come up here and we -- I don't know if
23 the Court wants to do this on a case-by-case basis. There are
24 going to be general hearsay objections.

25 We expect them to try to introduce analysts' reports

H3F3WAL3

1 through Mr. Engles. The law is -- we can brief this for your
2 Honor, but the law is pretty clear that unless something is to
3 declare a public fact, the only hearsay exception we are aware
4 of is if it goes to the defendant's state of mind, and
5 therefore the defendant must show and lay a foundation that the
6 defendant would have seen the analyst report. I don't know how
7 they're going to do that through Mr. Engles. There are other
8 witnesses that we do expect them to be able to do that before.

9 But we're sort of in the dark here and we don't want
10 to waste the jury's time, so we're flagging this for the Court,
11 to note that it may become somewhat of an issue.

12 THE COURT: I think the thing to do is if you can
13 conveniently get me at least the law part of it, and Mr. Berke,
14 what are you planning on offering the analyst reports for? We
15 talked about this a bit in the in limines.

16 MR. BERKE: And your Honor, we're using, again, in
17 part it depends on direct, but we have analyst reports we use
18 for a variety of reasons, much of it with this witness will be
19 to establish what the company itself was saying to the world.
20 In other words, what is public. And I believe we will lay a
21 proper foundation through this witness for the reports in which
22 we do seek to introduce information to show that it reflects
23 what is public by the company. Either things they said at a
24 conference, which Mr. Engles has already talked about that
25 meant public, or directly with analysts or the like.

H3F3WAL3

1 So I feel we will be able to lay a proper foundation
2 for any information we're seeking to introduce.

3 MR. GOLDMAN: Well, the problem, if they want to
4 introduce a transcript of something Mr. Engles said, that's one
5 thing. If they're going to introduce an analyst interpretation
6 of what Mr. Engles said, that's something entirely different.
7 And we've gotten from them analyst reports that, you know,
8 precede earnings announcements that don't have anything
9 noteworthy that's public, that's even separate from this issue
10 of the spinoff which will come up.

11 But we're in the dark as to what Mr. Engles said that
12 was the basis of those analyst reports. And even if he had
13 said anything, the analyst reports are not the vehicle. There
14 are transcripts of Mr. Engles that if he makes -- if they
15 become prior inconsistent statements, they can use them to
16 impeach him. We understand all that. But it does not appear
17 that's what they're trying to do, and we would object to the
18 analyst reports interpreting what he said, other than instead
19 of putting in his own words.

20 MR. BERKE: Your Honor, if I may. First, a couple
21 things. The analyst reports do, I think will reflect in part
22 what the company said. But also, Mr. Goldman certainly asked
23 Mr. Engles a number of times, including over my objection in
24 one instance, what the public understood, for example, about
25 WhiteWave. Did they know it. And in fact, there was a robust

H3F3WAL3

1 public discussion about WhiteWave going way back in time. And
2 certainly relevant the discussion and the debate that this
3 witness was aware of and aware of analyst reports and news
4 articles and the like that addresses the issue that Mr. Goldman
5 himself brought up. What did the public know and what were
6 they were discussing about WhiteWave at various key parts in
7 time. And I believe it's absolutely fair game. This witness
8 knows it. These are reports he would have reviewed and
9 responded to.

10 THE COURT: Well, listen, I think somebody ought to
11 get me, Mr. Berke, why don't you get me a set of the exhibits
12 you've given to the government so I have them. And if you have
13 any law you want to get me, that's fine as well. And it may be
14 that this is going to be on a question-by-question basis.
15 You'll try and lay a foundation before it comes in. It doesn't
16 walk in. You're going to have to lay a foundation through the
17 witness.

18 MR. BERKE: Absolutely, your Honor.

19 THE COURT: All right.

20 MR. GOLDMAN: Your Honor, Mr. Berke -- I understand
21 the rationale for it -- doesn't want to give us the exhibits he
22 intends to get in through this witness until the direct was
23 done.

24 THE COURT: I thought you had these exhibits.

25 MR. GOLDMAN: We have all of the defense exhibits. We

H3F3WAL3

1 don't know necessarily which ones he's going to put in.

2 THE COURT: All right.

3 MR. GOLDMAN: I'm not sure we have all of them. They
4 have given us a number of them. There may be others.

5 THE COURT: How much longer do you have with this
6 witness?

7 MR. GOLDMAN: I think I've got probably about two and
8 a half hours, your Honor. I'll try to pare it down but there
9 is a lot to get through.

10 THE COURT: Is this the man who wants to go to China?

11 MR. GOLDMAN: Yes.

12 THE COURT: His fate seems to be in your hands.

13 MR. GOLDMAN: And Mr. Berke's, your Honor.

14 THE COURT: Well, you know what the rules of the road
15 are.

16 MR. GOLDMAN: I have no application. If we are
17 getting close to the end, perhaps we could stay a little late
18 tomorrow night to try to finish it. But if not --

19 THE COURT: You know, listen, if it is a bench trial,
20 I'm all in favor of it. If, on the other hand, it is a jury
21 trial, it is a long day for the jurors going back to Rockland
22 County and places like that.

23 MR. GOLDMAN: We understand, and the witness
24 understands as well.

25 THE COURT: Thank you.

H3F3WAL3

1 MR. GOLDMAN: Thank you. That's it from the
2 government.

3 THE COURT: We are adjourned.

4 MR. BERKE: Thank you, your Honor.

5 MR. FERRARA: Have a good evening, your Honor.

6 THE COURT: You too.

7 (Adjourned until March 16, 2017, at 9:45 a.m.)
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INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

GREGG ENGLES	
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Direct By Mr. Goldman62
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GOVERNMENT EXHIBITS

Exhibit No.	Received
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474
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2278
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40288
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40391
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40592
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40897
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